

ORAL ARGUMENT NOT YET SCHEDULED

No. 18-1170 (Consolidated with Nos. 18-1178, 18-1197, 18-1199)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHAMROCK FOODS COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petitions for Review of the Orders of the National Labor Relations Board,
366 NLRB No. 107 (June 22, 2018), 366 NLRB No. 117 (June 22, 2018)

DEFERRED JOINT APPENDIX – VOLUME I

Mark W. DeLaquil
BAKER & HOSTETLER LLP
1050 Connecticut Avenue NW
Suite 1100
Washington, DC 20036
Tel: (202) 861-1527
Fax: (202) 861-1783
Email: mdelaquil@bakerlaw.com
Counsel for Shamrock Foods Company

PETER B. ROBB
General Counsel
JOHN W. KYLE
Deputy General Counsel
DAVID HABENSTREIT
Assistant General Counsel
ELIZABETH HEANEY
Supervisory Attorney
JOEL A. HELLER
Attorney
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-1743
(202) 273-2989
Elizabeth.Heaney@nrlrb.gov
Joel.Heller@nrlrb.gov
David.Habenstreit@nrlrb.gov
appellatecourt@nrlrb.gov
Counsel for National Labor Relations Board

DAVID A. ROSENFELD
WEINBERG ROGER & ROSENFELD
1001 Marina Village Parkway
Alameda, CA 94501-6430
(510) 337-1001
(510) 337-1023
courtnotices@unioncounsel.net
Counsel for Respondent-Intervenor

TODD A. DAWSON
BAKER & HOSTETLER LLP
127 Public Square
Suite 2000
Cleveland, OH 44114-1214

MICHAEL PARENTE
BAKER & HOSTETLER LLP
200 Civic Center Drive
Suite 1200
Columbus, OH 43215-4138

NANCY INESTA
BAKER & HOSTETLER LLP
11601 Wilshire Boulevard
Suite 1400
Los Angeles, CA 90025-0509
Of Counsel to Shamrock Foods Company

TABLE OF CONTENTS**JA Page No.**

PETITION FOR REVIEW OF NLRB ORDER (28-CA-150157)	JA 1
PETITION FOR REVIEW OF NLRB ORDER (28-CA-169970)	JA 5
CASE 28-CA-150157.....	JA 9
COMPLAINT.....	JA 9
AMENDMENT TO COMPLAINT.....	JA 30
TRANSCRIPT.....	JA 32
GENERAL COUNSEL'S EXHIBITS	JA 1021
Exhibit 1(a)	JA 1021
Exhibit 1(e)	JA 1023
Exhibit 1(g)	JA 1025
Exhibit 2.....	JA 1045
Exhibit 3.....	JA 1050
Exhibit 7.....	JA 1136
Exhibit 8.....	JA 1179
Exhibit 9.....	JA 1216
Exhibit 10.....	JA 1252
Exhibit 11.....	JA 1287
Exhibit 12.....	JA 1327
Exhibit 13.....	JA 1342
Exhibit 14.....	JA 1359
Exhibit 15.....	JA 1361
Exhibit 26.....	JA 1447

Exhibit 29.....	JA 1455
RESPONDENT’S EXHIBITS	JA 1484
Exhibit 1	JA 1484
Exhibit 5.....	JA 1538
ALJ EXHIBIT 2.....	JA 1552
GENERAL COUNSEL’S SUBPOENA DUCES TECUM.....	JA 1570
ADMINISTRATIVE LAW JUDGE’S DECISION	JA 1582
SHAMROCK’S POST-HEARING BRIEF*	JA 1653
NLRB DECISION AND ORDER.....	JA 1705
CASE 28-CA-169970.....	JA 1746
COMPLAINT.....	JA 1746
TRANSCRIPT.....	JA 1757
GENERAL COUNSEL’S EXHIBITS	JA 2645
Exhibit 2.....	JA 2645
Exhibit 5.....	JA 2648
Exhibit 6.....	JA 2650
Exhibit 7.....	JA 2653
Exhibit 8.....	JA 2658
Exhibit 9.....	JA 2660
Exhibit 16.....	JA 2662
Exhibit 17.....	JA 2664

* Shamrock’s Post-Hearing Brief is not part of the agency record as defined in 29 C.F.R. § 102.45(b).

Exhibit 18.....	JA 2667
Exhibit 19.....	JA 2669
Exhibit 20(c)	JA 2671
Exhibit 21(c)	JA 2689
Exhibit 22.....	JA 2697
Exhibit 23.....	JA 2711
RESPONDENT’S EXHIBITS	JA 2713
Exhibit 1	JA 2713
Exhibit 2.....	JA 2715
Exhibit 3.....	JA 2717
Exhibit 4.....	JA 2719
Exhibit 5.....	JA 2721
Exhibit 14.....	JA 2723
Exhibit 18.....	JA 2725
Exhibit 19.....	JA 2727
Exhibit 21.....	JA 2729
Exhibit 22.....	JA 2731
Exhibit 23.....	JA 2733
Exhibit 24.....	JA 2735
Exhibit 25.....	JA 2738
Exhibit 26.....	JA 2740
Exhibit 27.....	JA 2742
Exhibit 28.....	JA 2748

ADMINISTRATIVE LAW JUDGE'S DECISIONJA 2750

NLRB DECISION AND ORDER.....JA 2776

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHAMROCK FOODS COMPANY

18-1170

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

**PETITIONER SHAMROCK FOODS
COMPANY'S PETITION FOR
REVIEW OF NATIONAL LABOR
RELATIONS BOARD ORDER**

Shamrock Foods Company (“Shamrock”), pursuant to Federal Rule of Appellate Procedure 15(a) and 29 U.S.C. § 160(f), petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Order of the Respondent National Labor Relations Board in NLRB Case 28-CA-150157, entered on June 22, 2018, and titled “Decision and Order in Shamrock Foods Company and Bakery, Confectionery, Tobacco Workers’ and Grain Millers International Union, Local Union No 232, AFL-CIO-CLC.” A copy of the Order is attached as Exhibit A.

Dated: June 25, 2018

Respectfully submitted,

Baker & Hostetler LLP
Counsel for Shamrock Foods
Company

/s/ Mark W. DeLaquil
Mark W. DeLaquil
Baker & Hostetler LLP
1050 Connecticut Avenue NW
Suite 1100
Washington, DC 20036
Tel: (202) 861-1527
Fax: (202) 861-1783
Email: mdelaquil@bakerlaw.com

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHAMROCK FOODS COMPANY

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

**PETITIONER SHAMROCK FOODS
COMPANY'S PETITION FOR
REVIEW OF NATIONAL LABOR
RELATIONS BOARD ORDER**

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and 25(b), I hereby certify that true and correct copies of the foregoing Shamrock Foods Company's Petition for Review of National Labor Relations Board Order following via Federal Express on this the 25th day of June, 2018:

Linda J. Dreeben, Esq.
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Cornele A. Overstreet, Esq.
Regional Director
National Labor Relations Board
Region 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004-3099

Sarah S. Demirok, Esq.
National Labor Relations Board,
Region 28
2600 North Central Avenue, Suite
1400
Phoenix, Arizona 85004-3019

David A. Rosenfeld, Esq.
Alan Crowley, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite
200
Alameda, California 94501

Dated: June 25, 2018

Respectfully submitted,

Baker & Hostetler LLP
Counsel for Shamrock Foods
Company

/s/ Mark W. DeLaquil
Mark W. DeLaquil
Baker & Hostetler LLP
1050 Connecticut Avenue
Suite 1100
Washington, DC 20036
Tel: (202) 861-1527
Fax: (202) 861-1783
Email: mdelaquil@bakerlaw.com

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHAMROCK FOODS COMPANY

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

**PETITIONER SHAMROCK FOODS
COMPANY’S PETITION FOR
REVIEW OF NATIONAL LABOR
RELATIONS BOARD ORDER**

Shamrock Foods Company (“Shamrock”), pursuant to Federal Rule of Appellate Procedure 15(a) and 29 U.S.C. § 160(f), petitions the United States Court of Appeals for the District of Columbia Circuit for review of the Order of the Respondent National Labor Relations Board in NLRB Case 28-CA-169970, entered on June 22, 2018, and titled “Decision and Order in Shamrock Foods Company and Bakery, Confectionery, Tobacco Workers’ and Grain Millers International Union, Local Union No 232, AFL-CIO-CLC.” A copy of the Order is attached as Exhibit A.

Dated: June 28, 2018

Respectfully submitted,

Baker & Hostetler LLP
Counsel for Shamrock Foods
Company

/s/ Mark W. DeLaquil
Mark W. DeLaquil
Baker & Hostetler LLP
1050 Connecticut Avenue NW
Suite 1100
Washington, DC 20036
Tel: (202) 861-1527
Fax: (202) 861-1783
Email: mdelaquil@bakerlaw.com

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SHAMROCK FOODS COMPANY

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

**PETITIONER SHAMROCK FOODS
COMPANY'S PETITION FOR
REVIEW OF NATIONAL LABOR
RELATIONS BOARD ORDER**

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and 25(b), I hereby certify that true and correct copies of the foregoing Shamrock Foods Company's Petition for Review of National Labor Relations Board Order following via Federal Express on this the 28th day of June, 2018:

Linda J. Dreeben, Esq.
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Cornele A. Overstreet, Esq.
Regional Director
National Labor Relations Board
Region 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004-3099

Sarah S. Demirok, Esq.
National Labor Relations Board,
Region 28
2600 North Central Avenue, Suite
1400
Phoenix, Arizona 85004-3019

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite
200
Alameda, California 94501

Dated: June 28, 2018

Respectfully submitted,

Baker & Hostetler LLP
Counsel for Shamrock Foods
Company

/s/ Mark W. DeLaquil
Mark W. DeLaquil
Baker & Hostetler LLP
1050 Connecticut Avenue
Suite 1100
Washington, DC 20036
Tel: (202) 861-1527
Fax: (202) 861-1783
Email: mdelaquil@bakerlaw.com

Rec'd 7/27

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Shamrock Foods Company (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on April 15, 2015, and a copy was served on Respondent by U.S. mail on April 16, 2015.
- (b) The first amended charge in this proceeding was filed by the Union on May 22, 2015, and a copy was served on Respondent by U.S. mail on that same date.
- (c) The second amended charge in this proceeding was filed by the Union on June 26, 2015, and a copy was served on Respondent by U.S. mail on that same date.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Phoenix, Arizona (Respondent's facility), and has been engaged in the wholesale distribution of food products.

(b) In conducting its operations during the 12-month period ending April 15, 2015, Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Ivan Vaivao	-	Warehouse Operations Manager
Mark Engdahl	-	Vice-President of Operation Foods Service
Kent McClelland	-	Chief Executive Officer
Dwayne Thomas	-	Third Shift Supervisor
Joe Remblance	-	Safety Manager
Armando Gutierrez	-	Warehouse Supervisor
Jerry Kropman	-	Plant Manager
Natalie Wright	-	Manager of Human Resources
Brian Nicklen	-	Forklift Manager
Jake Myers	-	Day Systems Shipping Supervisor
Leland Scott	-	Night Shift Dock Supervisor
Karen Garzon	-	Sanitation Supervisor
Art Manning	-	Floor Captain
Zack White	-	Floor Captain

5. (a) About March 31, 2015, Respondent's employee Thomas Wallace concertedly complained to Respondent regarding the wages, hours, and

working conditions of Respondent's employees, by criticizing the health benefits offered by Respondent to employees during a Town Hall staff meeting at Respondent's facility.

(b) Since about October 15, 2014, Respondent has maintained the following overly-broad and discriminatory rules in its Associate Handbook:

(1) **Protecting the Company's Confidential Information**

The Company's confidential information is a valuable asset and includes: information, knowledge, or data concerning . . . associates, . . . Company manuals and policies, . . . calendars and/or day-timers that contain customer contact and other customer information, [and] compensation schedules[.]

* * *

All confidential information must be used for Company business purposes only. Every associate, agent, and contractor must safeguard it. **THIS RESPONSIBILITY INCLUDES NOT DISCLOSING THE COMPANY CONFIDENTIAL INFORMATION, INCLUDING INFORMATION REGARDING THE COMPANY'S PRODUCTS OR BUSINESS, OVER THE INTERNET, INCLUDING THROUGH SOCIAL MEDIA.**

(2) **Non-Disclosure/ Assignment Agreement.**

When you joined the Company, you signed an agreement to protect and hold confidential the Company's proprietary information. This agreement remains in effect for as long as you work for the Company and after you leave the Company. Under this agreement you may not disclose the Company's confidential information to anyone or use it to benefit anyone other than the Company without the prior written consent of an authorized Company officer.

(3) **Requests by Regulatory Authorities.**

All government requests for information, documents or investigative interviews must be referred to the Company's Human Resources Department.

(4) **Company Spokespeople.**

The Company has an established Spokesperson who handles all requests for information from the Media. Ms. Sandra Kelly at the

Dairy is the person who has been designated to provide overall Company information or to respond to any public events or issues for which we might receive press calls or inquiries. If you believe that an event or situation may result in the press seeking additional information, please contact Ms. Kelly at the Dairy to advise her of the nature of the situation so that she may be prepared for any calls.

(5) **Electronic and Telephonic Communications**

All electronic and telephonic communications systems and all communications and information transmitted by, received from, or stored in these systems are the property of Shamrock and as such are to be used solely for job-related purposes. The use of any software and business equipment, including, but not limited to, facsimiles, computers, the Company's E-mail system, the Internet, and copy machines for private purposes is strictly prohibited.

* * *

Moreover, improper use of the E-mail system (e.g., spreading offensive jokes or remarks), including the Internet, will not be tolerated.

(6) Monitoring Use

Shamrock reserves the right to use software and blog-search tools to monitor comments or discussions about company representatives, customers, vendors, other associates, the company and its business and products, or competitors that associates or non-associates post anywhere on the Internet, including in blogs and other types of openly accessible personal journals, diaries, and personal and business discussion forums.

(7) E-Mail

Associates are prohibited from using any Instant Messaging applications except those provided specially by Shamrock for Associate's business use.

(8) World Wide Web

As a general rule, associates may not forward, distribute, or incorporate into another work, material retrieved from a Web site or other external system.

* * *

2. No Downloading of Non-Business Related Data: The Company allows the download of files from the Internet. However, downloading

files should be limited to those that relate directly to Shamrock business.

* * *

4. No Participation in Web-Based Surveys without Authorization:

When using the Internet, the user implicitly involves Shamrock in his/her expression. Therefore, users should not participate in Web or E-mail based surveys or interviews without authorization. (page 60)

(9) Blogging

The following rules and guidelines apply to blogging, whether blogging is done for Shamrock on company time, on a personal Web site during non-work time, or outside the workplace. The rules and guidelines apply to all associates.

(A) Shamrock discourages associates from discussing publicly any work-related matters, whether confidential or not, outside company-authorized communications. Nonofficial company communications include Internet chat rooms, associates' personal blogs and similar forms of online journals or diaries, personal newsletters on the Internet, and blogs on Web sites not affiliated with, sponsored, or maintained by Shamrock.

(B) Associates have a duty to protect associates' home addresses . . . and other personal information and . . . financial information . . . and nonpublic company information that associates can access.

(C) Associates cannot use blogs to harass, threaten, libel, or slander, malign, defame or disparage, or discriminate against co-workers, managers, customers, clients, vendors or suppliers, and organizations associated or doing business with Shamrock, or members of the public, including Web site visitors who post comments about blog contents.

(D) Associates cannot use Shamrock's logo or trademarks or the name, logo, or trademarks of any business partner, supplier, vendor, affiliate, or subsidiary on any personal blogs or other online sites unless their use is sponsored or otherwise sanctioned, approved, or maintained by Shamrock.

* * *

Associates cannot post on personal blogs Shamrock's copyrighted information or company-issued documents bearing Shamrock's name, trademark, or logo.

(E) Associates cannot post on personal blogs photographs of company events, other associates or company representatives engage in Shamrock's business, or company products, unless associates have received Shamrock's explicit permission.

(F) Shamrock discourages associates from linking to Shamrock's external or internal Web site from personal blogs.

(10) *Guideline to Prohibited Activities*

The following behaviors are examples of previously stated or additional actions to activities that are prohibited and considered improper use of the Internet, E-mail or voicemail systems provided by Shamrock. These examples are provided as guidelines only and are not all-inclusive:

(A) Sending or posting confidential material, trade secrets, or proprietary information outside of the organization.

(B) Refusing to cooperate with security investigations.

(C) Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities.

(D) Sending or posting messages that disparage another organization.

(11) *Reporting Violations*

Shamrock requests and urges associates to use official company communications to report violations of Shamrock's blogging rules and guidelines, customers' or associates' complaints about blog content, or perceived misconduct or possible unlawful activity related to blogging, including security breaches, misappropriation or theft of proprietary business information, and trademark infringement.

Associates can report actual or perceived violations to supervisors, other managers, or to Human Resources.

(12) *Reporting Violations*

As a condition of employment and continued employment, associates are required to sign an Electronic and Telephonic Communications

Acknowledgement Form. Applicants are required to sign this form on acceptance of an employment offer by Shamrock.

(13) Guidelines to Appropriate Conduct

Listed below are some of the rules and regulations of Shamrock. This list should not be viewed as all-inclusive. It is intended only to illustrate the types of behavior and conduct that Shamrock considers inappropriate and grounds for disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, including, but not limited to, the following:

(A) Theft and/or deliberate damage or destruction of property not belonging to the associate, including the misuse or unauthorized use of any products, property, tools, equipment of any person or the unauthorized use of any company-owned equipment.

(B) Any act that interferes with another associate's right to be free from harassment or prevents an associate's enjoyment of work . . . or conduct that creates a disturbance in the workplace.

(14) No Solicitation, No Distribution

The conducting of non-company business related activities is prohibited during the working time by either the associate doing the soliciting or the associate being solicited or at any time in customer or public areas. Associates may not solicit other associates under any circumstances for any non-company related activities.

The distribution of non-company literature, such as leaflets, letters or other written materials by an associate is not permitted . . . any time in working areas or in customer and public areas.

(15) No Solicitation, No Distribution

If you would like to post any Shamrock business-related materials, please see your Department Manager, the General/Branch Manager or the Human Resources Representative. Only these individuals are authorized to approve and post information on Shamrock bulletin boards.

(c) Since about October 15, 2014, Respondent has, by maintaining policies in its Associate Handbook, threatened its employees with discipline and/ or discharge

for violating the overly-broad and discriminatory work rules as described in paragraphs 5(b)(5) and 5(b)(9) through 5(b)(12).

(d) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(6), created an impression among its employees that their union and other protected activities were under surveillance by Respondent.

(e) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(11), solicited its employees to report other employees who engage in union and other protected activities to Respondent.

(f) About January 25, 2015, Respondent, by Zack White, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies of other employees; and

(2) by telling its employees that there were rumors in the warehouse about an organizing campaign, created an impression among its employees that their union activities were under surveillance by Respondent.

(g) About January 28, 2015, Respondent, by Mark Engdahl (Engdahl), at Respondent's facility:

(1) threatened its employees with loss of benefits by telling employees that when employees are represented by a union, the slate is wiped clean on wages, benefits, and other working conditions once collective bargaining begins; and

(2) granted employees benefits by telling employees who complained about working conditions to make an appointment to come see Respondent.

(h) About January 28, 2015, Respondent, by Natalie Wright (Wright), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(i) About January 28, 2015, Respondent, by Jake Myers, at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(j) About January 28, 2015, Respondent, by Art Manning (Manning), at Denny's restaurant on I-17 and Thomas Road in Phoenix, Arizona, engaged in surveillance of its employees engaged in union activities.

(k) About February 5, 2015, Respondent, by Ivan Vaivao (Vaivao), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(l) About mid-February, 2015, a more precise date being unknown to the General Counsel, by Vaivao and Wright, at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(m) About February 24, 2015, Respondent, by Vaivao, at

Respondent's facility:

(1) by telling its employees that Respondent had an idea of who was organizing, created an impression among its employees that their union activities were under surveillance by Respondent; and

(2) by asking its employees to raise their hand to let Respondent know if another employee contacted them, asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees.

(n) About March 26, 2015, Respondent, by Vaivao, Brian Nicklen (Nicklen) and a Human Resource Representative, whose name is currently unknown to the General Counsel, created an impression among its employees that their union activities were under surveillance by Respondent by:

(1) telling its employees that Respondent knows everything that is going on;

(2) telling its employees that they should know that Respondent knows who they are;

(3) telling its employees that Respondent knows exactly who they are; and

(4) telling its employees that Respondent knew there was a union meeting off property a few weeks ago and that Respondent knew who attended these meetings.

(o) About March 26, 2015, Respondent, by Vaivao, Nicklen and a Human Resource Representative, whose name is currently unknown to General Counsel,

informed its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that shifts cannot be changed.

(p) About April 6, 2015, Respondent discharged employee Thomas Wallace (Wallace).

(q) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace engaged in the conduct described above in paragraph 5(a), and to discourage employees from engaging in these or other concerted activities.

(r) About April 6, 2015, Respondent promulgated and since then has maintained the following overly-broad and discriminatory rules in its Separation Agreement and Release and Waiver as presented to employee Wallace on that same date:

(1) **Paragraph 9**

Because the information in this Separation Agreement is confidential, it is agreed that you will not disclose the terms of this Separation Agreement to anyone, except that you may disclose the terms of this Separation Agreement to your family, your attorney, your accountant, a state unemployment office, and to the extent required by a valid court order or by law.

(2) **Paragraph 10**

All information, whether written or otherwise, regarding the Released Parties' businesses, including but not limited to financial, personnel or corporate information . . . are presumed to be confidential information of the Released Parties for purposes of this Agreement.

(3) **Paragraph 12**

You may not use/disclose any of the Company's Confidential Information for any reason following your termination and during the transition period.

(4) **Paragraph 13**

You agree not to make any disparaging remarks or take any action now, or at any time in the future, which could be detrimental to the Released Parties.

(s) About April 27, 2015, Respondent, by Manning, at

Respondent's facility:

(1) by telling its employees that Respondent knew which employees announced they were organizing for the union in the break room at Respondent's facility, engaged in surveillance of employees engaged in union activities; and

(2) threatened its employees with unspecified reprisals by telling employees that they had better watch their back because Respondent was watching.

(t) About April 29, 2015, Respondent, by Engdahl, at

Respondent's facility:

(1) by telling its employees that Respondent understood who was behind the Union, created the impression among its employees that their union activities were under surveillance by Respondent;

(2) threatened its employees with unspecified reprisals by telling its employees the Union will hurt them;

(3) threatened its employees with unspecified reprisals by telling employees the Union will hurt everybody in the future;

(4) by telling its employees that through collective bargaining, Respondent does not have to agree to anything, informed employees that it would be futile for them to select the Union as their bargaining representative.

(u) About April 29, 2015, Respondent, by Joe Remblance, at Respondent's facility:

- (1) interrogated its employees about their union membership, activities, and sympathies; and
- (2) by watching its employees talk with each other during non-working time and immediately asking them what they were discussing, engaged in surveillance of employees engaged in union activities.

(v) About May 1, 2015, Respondent, by David Garcia, at Respondent's facility:

- (1) by searching through the personal belongings of its employees, engaged in surveillance of its employees engaged in union activities;
- (2) created the impression among its employees that their union activities were under surveillance by:
 - (A) telling its employees that Respondent knew that employees handed a union card to another employee in the South End break room at Respondent's facility; and
 - (B) informing its employees that Respondent was looking for union cards.
- (3) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(w) About May 5, 2015, Respondent, by Engdahl and Vaivao, at Respondent's facility:

(1) threatened its employees with unspecified reprisals, by telling its employees that discussions and heckling related to the Union would not be tolerated;

(2) by telling its employees that Respondent knew that there were problems on the floor, created the impression among its employees that their union activities were under surveillance by Respondent; and

(3) promulgated an overly-broad and discriminatory rule that heckling, insulting or potential slow-down by its employees who did not share a similar point of view would not be tolerated in response to its employees' organizing activities.

(x) About May 8, 2015, Respondent, by a letter issued to its employees from Kent McClelland:

(1) promulgated and has since maintained an overly-broad and discriminatory rule prohibiting its employees from engaging in unlawfully coercive behavior or bullying, in response to employees' organizing activities;

(2) asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees, by telling its employees to report co-workers who violate the rule described above in paragraph 5(x)(1); and

(3) threatened its employees with legal prosecution if they violate the rule as described above in paragraph 5(x)(1).

(y) About May 25, 2015, Respondent, by Karen Garzon (Garzon), at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies; and

(2) by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

(z) About May 29, 2015, Respondent, by Vaivao, at Respondent's facility, by increasing the wage rate to certain of its employees, granted benefits to its employees to dissuade its employees from supporting or voting for the Union.

(aa) About June 15, 16, 17 and July 8, 2015, Respondent, by Garzon, at Respondent's facility, by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).

(b) Respondent engaged in the conduct described above in paragraph 6(a) because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5 through 6, the General Counsel seeks an Order requiring that the Notice be read to employees during working time by Kent McClelland, in both English and Spanish and with a sign language interpreter. Alternatively, the General Counsel seeks an order requiring that Respondent have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and/or agents identified above in paragraph 4.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5(p) and 5(q), the General Counsel seeks an order requiring that Respondent reimburse discriminatee(s) for all search-for-work and work-related expenses regardless of whether the discriminatee(s) received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 4, 2015, or postmarked on or before August 3, 2015.**

Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile

transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on September 8, 2015, 1:00 p.m. the Hearing Room, National Labor Relations Board, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 21st day of July 2015.


Cornele A. Overstreet, Regional Director

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 28-CA-150157

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791

Jay Krupin, Attorney at Law
Baker & Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036

Nancy Inesta, Attorney at Law
Baker & Hostetler LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

Bakery, Confectionery, Tobacco Workers'
and Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

David A. Rosenfeld, Attorney at Law
Weinberg Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules and regs part 102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

AMENDMENT TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, the Complaint and Notice of Hearing issued on July 21, 2015, is amended to delete the present paragraph 6 and substitute in its place the following paragraph 6; and to amend the second unnumbered paragraph on page 16 as follows:

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).
- (b) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.
- (c) Respondent engaged in the conduct described above in paragraph 6(a), because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The second unnumbered paragraph on page 16 is amended to insert after the words "paragraphs 5(p)" the words "5(q) and 6(b)."

The remainder of the Complaint and Notice of Hearing is unchanged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amendment to the complaint.

The answer must be **received by this office on or before August 27, 2015, or postmarked on or before August 26, 2015**. Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to an amendment to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 8, 2015

Pages: 1 through 48

Volume: 1

OFFICIAL REPORTERS

AVTranz

E-Reporting and E-Transcription

845 North 3rd Avenue

Phoenix, AZ 85003

(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

SHAMROCK FOODS COMPANY,

and

BAKERY, CONFECTIONERY,
TOBACCO WORKERS' AND GRAIN
MILLERS INTERNATIONAL UNION,
LOCAL UNION NO. 232, AFL-CIO-
CLC

Case No. 28-CA-150157

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004, on **Tuesday, September 8, 2015, at 1:07 p.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****SARA DEMIROK, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Tel. 602-640-2126
Fax. 602-640-2178

ELISE F. OVIEDO

NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, NV 89101
Tel. 702-388-6211
Fax. 702-388-6248

On behalf of the Respondent:**TODD A. DAWSON, ESQ.**

BAKER & HOSTELLER, LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Tel. 216-861-7652
Fax. 216-696-0740

NANCY INESTA, ESQ.

BAKER & HOSTELLER, LLP
116011 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Tel. 310-442-8833
Fax. 310-820-8859

On Behalf of the Union:**ALAN G. CROWLEY, ESQ.****DAVID A. ROSENFELD, ESQ.**

WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

GC-1 (a) through GC-1 (w)

5

5

GC-2

29

29

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: Let's go on the record. Okay, this is
3 the case of Shamrock Foods Company. The case of 28-CA-150157.
4 My name is Jeffrey Wedekind. I'm the Administrative Law Judge
5 that that has been assigned to the case. I'm based out of San
6 Francisco, so any documents that are filed should be filed with
7 the Division of Judges in San Francisco.

8 Counsel, would you like to identify yourselves, starting
9 with the General Counsel?

10 MS. DEMIROK: I'm Sara Demirok, counsel for General
11 Counsel.

12 MS. OVIEDO: And Elise Oviedo, also counsel for the
13 General Counsel.

14 JUDGE WEDEKIND: Charging Party?

15 MR. CROWLEY: Alan Crowley, Weinberg, Roger, Rosenfeld,
16 and David Rosenfeld.

17 JUDGE WEDEKIND: Okay. And for the Company?

18 MR. DAWSON: Your Honor, Todd Dawson, from Baker
19 Hostetler, for Shamrock.

20 MS. INESTA: Your Honor, Nancy Inesta from Baker
21 Hostetler, for Shamrock.

22 MS. WILLIAMS: Karen Williams, the director at Shamrock
23 Food Company.

24 JUDGE WEDEKIND: Okay. And you're an attorney as well?

25 MS. WILLIAMS: I am. Okay, so all three. Okay, thank

1 you. All right, would you like to proffer the formal papers at
2 this time, or do you want to wait? Do you want to do it now?

3 MS. DEMIROK: Yes, Your Honor. I'd like to introduce a
4 formal document, which has been marked as General Counsel
5 Exhibit 1(a) through 1(w), with (w) being an index and
6 description of the documents. I've shown and provided a copy
7 to Respondent, and both the charging -- and the Charging Party.
8 And I'd like to offer it formally into evidence at this time.

9 JUDGE WEDEKIND: Any objection?

10 MR. DAWSON: No objection, Your Honor.

11 JUDGE WEDEKIND: Okay. They're received.

12 **(General Counsel Exhibit Number 1(a) through 1(w) Received into**
13 **Evidence)**

14 JUDGE WEDEKIND: Just to repeat what I said maybe on a --
15 part conference call, I would like to get a copy of each
16 exhibit. And I'll -- I'm happy to give my copy to the court
17 reporter after we're done. That's so I can follow along.
18 (Counsel confer)

19 JUDGE WEDEKIND: All right. Do we have any stipulations?

20 MR. DAWSON: Your Honor, Respondent has two stipulations
21 to propose.

22 JUDGE WEDEKIND: Okay.

23 MR. DAWSON: We would propose that the individuals
24 identified in complaint paragraphs 4 down to Art Manning and
25 Zack White, we would stipulate to their 211 status. We'd ask

1 for a stipulation that Manning and White are not 211
2 supervisors. But, you know, nonetheless we would stipulate to
3 the supervisory status of the other individuals.

4 JUDGE WEDEKIND: Okay. So you're still disputing Manning
5 and White?

6 MR. DAWSON: Yes, Your Honor.

7 JUDGE WEDEKIND: Okay.

8 MS. DEMIROK: We'd be more than willing to stipulate to
9 all of the individuals, except for Art Manning and Jake -- Zack
10 White.

11 MS. INESTA: We're -- GC is still asserting that they are
12 611(c) witnesses and supervisors as defined by the Act.

13 JUDGE WEDEKIND: Okay. Do you joint the stipulation?

14 MR. CROWLEY: Yes.

15 JUDGE WEDEKIND: Okay. Thank you, that helps. Do you
16 want to stipulate to the labor organization status, too? Or
17 are you going to want to make them put on evidence.

18 MR. DAWSON: No, Your Honor.

19 JUDGE WEDEKIND: Okay.

20 MR. DAWSON: Not to stipulate to organization -- labor
21 organization status.

22 MR. CROWLEY: Well Your Honor, if Respondent's counsel
23 were to receive the collective bargaining agreements and the
24 bylaws, would that help persuade them --

25 JUDGE WEDEKIND: Yeah.

1 MR. DAWSON: I could take a look at it. I can't -- you
2 know, I obviously can't say without looking at the documents.
3 But certainly it's something we'd entertain.

4 JUDGE WEDEKIND: Okay. It might help. All right.

5 MR. DAWSON: The other stipulation that we would propose
6 would be that the handbook provisions, which are referenced in
7 complaint paragraph 5(b)(1) through 15 are accurate in exchange
8 for a stipulation -- and this one would be conditional -- in
9 exchange for a stipulation that there's no evidence of anyone
10 being disciplined for any of -- for violation of any of those
11 provisions.

12 JUDGE WEDEKIND: Do you plan on asserting an enforcement
13 violation, or just a maintenance violation? What does the
14 complaint say on it?

15 MS. DEMIROK: The complaint is a maintenance. However,
16 there is some discipline with Mr. Lerma, an employee -- Mario
17 Lerma -- which we think has to do with harassment policy. And
18 that's going to depend on what they submit as their defense.
19 So with that exception, we would be willing to stipulate to
20 that.

21 JUDGE WEDEKIND: Okay. Well what is the accuracy of the
22 provisions have anything to do with enforcement?

23 MR. DAWSON: Just so that we can get through, you know,
24 without having to put on evidence of the handbook and so forth.
25 We thought it might expedite things. We're not aware of any

1 evidence of discipline. I think it's a matter of dispute over
2 whether Mr. Lerma was disciplined. Obviously, the evidence
3 will address that, but there's nothing in his personnel file.
4 He wasn't given any kind of written discipline, any kind of
5 warning, counseling, anything. So you know again, I guess we
6 can get to it at the evidence stage.

7 MS. DEMIROK: Well I would say we would like to submit the
8 handbook into evidence, as that will show the context for the
9 rules. And --

10 JUDGE WEDEKIND: So you already have a copy of the whole
11 handbook?

12 MS. DEMIROK: We do.

13 JUDGE WEDEKIND: And it's your plan to put it all in?

14 MS. DEMIROK: Yes.

15 JUDGE WEDEKIND: And all -- at least these 15 -- or 15 --
16 they're all in the handbook?

17 MS. DEMIROK: They are all in the handbook.

18 JUDGE WEDEKIND: Okay. I don't know how thick the
19 handbook is, but --

20 MS. DEMIROK: It's not an expansive handbook.

21 JUDGE WEDEKIND: Okay. They might want it in for
22 completeness anyway. It's up to you. So do we have a
23 stipulation that they're accurate?

24 MR. DAWSON: I'd have to see the handbook itself. I
25 mean --

1 JUDGE WEDEKIND: No, I mean the 15 rules.

2 MR. DAWSON: -- the 15 rules, I believe -- you know what,
3 Your Honor? I'll have to check with our client to make sure.
4 I can't stipulate to that at this point.

5 JUDGE WEDEKIND: Well the purpose of the stipulation is to
6 avoid putting on a witness, I suppose, to authenticate them, to
7 say that they are what they are. And how were you planning on
8 doing that? Were you going to call a management witness to do
9 that?

10 MS. DEMIROK: Yeah, there are several management witnesses
11 that --

12 JUDGE WEDEKIND: Okay.

13 MS. DEMIROK: -- we believe can testify to that. And we
14 don't think it would take very much testimony to authenticate
15 the document.

16 JUDGE WEDEKIND: Okay. Do you want to stipulate with a
17 condition, or not?

18 MS. OVIEDO: No, Your Honor. Not at this time.

19 JUDGE WEDEKIND: Okay. So you're going to call a
20 management witness to do it?

21 MS. OVIEDO: Yes, Your Honor.

22 JUDGE WEDEKIND: Okay. So there's no stipulation unless
23 you change your mind. Any other stipulations? Okay.

24 Does anybody want a sequestration order in this
25 proceeding?

1 MS. DEMIROK: General Counsel would move for an order of
2 sequestration of witnesses.

3 JUDGE WEDEKIND: Okay.

4 MR. DAWSON: No objection, Your Honor.

5 JUDGE WEDEKIND: Okay. All right, I'll go ahead and issue
6 it now just to get it out of the way. So I am issuing a
7 sequestration order consistent with Greyhound Lines, 319 NLRB
8 554. It imposes essentially two obligations on witnesses.
9 First, they can't be in the courtroom except when they're
10 testifying. Exceptions are discriminatees. We have two of
11 them. Do you plan on having them here at all except when
12 they're testifying?

13 MS. DEMIROK: Not except for when they're testifying.

14 JUDGE WEDEKIND: Okay. So it shouldn't be a problem.
15 Also, any individuals who you deem essential to the
16 presentation of your case, do you -- on the General Counsel's
17 side, do you have any individuals?

18 MS. DEMIROK: We are not going to designate anybody from
19 our side. Charging Party will -- do that.

20 JUDGE WEDEKIND: At this point?

21 MR. CROWLEY: Yeah, Charging Party will have Michael
22 Wizner --

23 JUDGE WEDEKIND: Okay.

24 MR. CROWLEY: -- who is the financial secretary of the
25 local -- as the authorized representative for Charging Party.

1 JUDGE WEDEKIND: Okay. Anybody on the company side?

2 MR. DAWSON: It may vary, but at least for now Ms.

3 Williams who is in-house counsel for -- I'm sorry, that's not
4 your proper title. But she's -- she is a member of Shamrock --
5 an employee of Shamrock.

6 JUDGE WEDEKIND: Okay. So I just -- for my own -- so are
7 you acting as counsel in this proceeding, or are you acting as
8 just a representative of the company?

9 MR. DAWSON: She'll be our client representative, Your
10 Honor.

11 JUDGE WEDEKIND: I got -- okay. So should we list Ms.
12 Williams as counsel on the case, or not?

13 MS. WILLIAMS: I am not counsel, I'm the company's
14 representative.

15 JUDGE WEDEKIND: Okay.

16 MR. DAWSON: Right. Yes, so she should not be --

17 JUDGE WEDEKIND: She should not --

18 MR. DAWSON: -- listed as --

19 JUDGE WEDEKIND: -- okay. That's what I was trying to
20 determine.

21 MS. DEMIROK: -- yeah. Thank you, Your Honor.

22 JUDGE WEDEKIND: Okay, thank you. Okay. All right, with
23 respect to the other obligation on the witnesses, is that they
24 may not discuss their testimony with any other witnesses or
25 potential witnesses in the proceeding until the proceeding is

1 over.

2 There's two obligations on counsel. First, you may not
3 inform your witnesses of the testimony that other witnesses
4 have or will give. The exception is testimony by witnesses for
5 the other side. You can tell them about that to prepare them
6 for their testimony.

7 Now the second obligation on counsel is to police the
8 order. It's your obligation to police it. If someone comes
9 in, please take notice and see who they are, make sure they're
10 not violating the sequestration order. Any questions,
11 objections to that order?

12 MR. DAWSON: None from Respondent, Your Honor.

13 JUDGE WEDEKIND: Okay.

14 MS. DEMIROK: None, Your Honor.

15 JUDGE WEDEKIND: Okay. Any other preliminary matters
16 before we take a break?

17 MR. DAWSON: Actually, Your Honor, we have some items that
18 we'd like to put on the record if it would be okay with Your
19 Honor.

20 JUDGE WEDEKIND: Okay.

21 MR. DAWSON: I'd like to put our objections on the record
22 regarding the subpoena duces tecum. We feel the over breadth
23 will have a chilling effect on employer free speech under 8(c)
24 of the Act and the First Amendment. As I mentioned, we're
25 doing our best to collect responsive documents. The production

1 may be ongoing. Objection to -- on the petitions to revoke the
2 subpoenas as -- ad testificandum -- if I can get that out --

3 JUDGE WEDEKIND: Uh-huh.

4 MR. DAWSON: -- as stated in our petition to revoke, Mr.
5 McClelland has only had privileged conversations relevant to
6 this matter. Mr. Beake was not identified as a supervisor or a
7 witness in the initial complaint. And in fact wasn't named
8 until after we had filed the petition to revoke.

9 And then finally, we object to the rulings denying
10 Shamrock's request to continue the hearing, even for a matter
11 of days. We feel that commencement of the hearing at this time
12 is prejudicial. Those were the objections that we'd like to
13 get on the record.

14 In addition, we have a couple of items that are, you know,
15 in the nature of a motion in limine. Although, obviously, in a
16 board proceeding, that's not a typical procedural device. As
17 stated in our answer, we feel a number of the complaint
18 allegations are too general to permit preparation of an
19 adequate defense. Specifically, those would be paragraphs
20 5(f), as in Frank, (1), 5(h), 5(i), 5(k), 5(l), 5(w)(1),
21 5(v)(3), and --

22 JUDGE WEDEKIND: What was that? What was that last one?
23 Something 3?

24 MR. DAWSON: 5(v) --

25 JUDGE WEDEKIND: (v).

1 MR. DAWSON: -- (v) (3) -- Victor.

2 JUDGE WEDEKIND: Okay.

3 MR. DAWSON: And 5(y) (1). As I recall, General Counsel
4 made representation to Your Honor that they're ethically
5 prohibited from disclosing any evidence regarding those
6 allegations. We believe that if they're ethically prohibited
7 from disclosing the evidence that should carry through to the
8 hearing.

9 However, to the extent that they intend to proceed, we
10 move for a bill of particulars, asking for identification of
11 the statements that are alleged to be unlawful. And in a
12 number of the complaint allegations, so for example, paragraph
13 5 -- I'm sorry. I thought I had this marked. In paragraph
14 5(g) (1), there's an allegation that Mr. Engdahl threatened
15 employees with loss of benefits by telling them that the site
16 is ripe, clean on wages, benefits, et cetera. That's the only
17 kind of information we'd be looking for. Not names of employee
18 witnesses, and so forth.

19 Alternatively, we ask that the General Counsel not be
20 permitted to call management witnesses before listening to
21 other testimony on these violations. At this point, we've had
22 no way to prepare our witnesses. As I mentioned, Your Honor
23 can understand these are conversations that happened, some of
24 them as far back as January. For there to be no identification
25 of the particular statement made has made it fairly impossible

1 for us to have frank and privileged conversations with our
2 witnesses.

3 To the extent that General Counsel is permitted to
4 question a manager representative on these allegations before
5 any other testimony is elicited, because they'll be on the
6 stand, we won't be able to have any kind of discussions with
7 management representatives. So we ask that either the bill of
8 particulars be granted and requiring General Counsel to
9 identify particular statements alleged to have violated the
10 Act, or that General Counsel be required to call non-management
11 witnesses first to testify in these allegations, and that we'd
12 be given at least until the following day to prepare a defense.

13 Finally, we anticipate that there may be an issue with
14 video or audio recordings as evidence. Obviously, this is you
15 know, a developing issue. I know there are provision in the
16 bench book in terms of how to deal with this. We believe that
17 the cases cited in the bench book are limited to circumstances
18 where the General Counsel is not submitting the evidence as
19 substantive. Since -- let me step back. Not submitting the
20 recorded evidence as substantive.

21 We've filed a -- or issued a subpoena to the Union today,
22 asking for production of anything in its possession. However,
23 we anticipate that the Union may claim that all copies are in
24 the hands of the General Counsel. At that point, we may have
25 to go through the procedure in 102.118(a) of the Board's rules

1 and regs, and ask for permission from the General Counsel for
2 production.

3 But we do feel that to the extent that that evidence is
4 going to be used, it -- we should be -- we should have access
5 to the full and complete copies, not edited. And we should
6 have access to all of the recordings for exculpatory or context
7 evidence, particularly in light of the fact that a number of
8 the speech violations that General Counsel is alleging. For
9 example, statements regarding the slate being wiped clean are
10 context based violations, and the case law requires
11 consideration of all the surrounding facts.

12 JUDGE WEDEKIND: Okay. Why don't we just start -- do you
13 want to respond to the -- now the -- just let me say, the
14 objections with respect to subpoenas, I already issued a ruling
15 on that in writing. The orders with respect to your motions
16 for postponement are also in writing. Are those in the formal
17 papers?

18 MS. DEMIROK: Yes, Your Honor.

19 JUDGE WEDEKIND: All of them are? Okay, that's fine.

20 MS. DEMIROK: Well actually, Your Honor, hold on. Let's
21 just look at that. We gave Your Honor our copy of --

22 JUDGE WEDEKIND: Of the formal papers?

23 MS. DEMIROK: -- the formals.

24 JUDGE WEDEKIND: Oh. There's 1(k), 1(j). Oh, that's the
25 request. It's the order.

1 MS. DEMIROK: The responses to the motions to postpone are
2 in the -- are included in the formals. But any petitions or
3 decisions on those petitions are not included in the formal
4 documents.

5 JUDGE WEDEKIND: On subpoenas that are not in there,
6 right. Well that's typical. The objection is now on the
7 record, so I think we should add the order since he made the
8 objection on the record to the subpoenas. Just so it's in
9 there as to why the objections were denied. Do you want to put
10 that in, the GC, as a GC Exhibit?

11 MS. DEMIROK: We would like to put that in.

12 JUDGE WEDEKIND: Okay.

13 MS. DEMIROK: However, I don't have that prepared at the
14 moment, so --

15 JUDGE WEDEKIND: That's fine.

16 MS. DEMIROK: -- if we could --

17 JUDGE WEDEKIND: Okay. Make a note --

18 MS. DEMIROK: -- agree to a later --

19 JUDGE WEDEKIND: -- sure.

20 MS. DEMIROK: -- copy.

21 JUDGE WEDEKIND: Sure. I just want to make -- see if you
22 want to put it in. Now I think your answer to the complaint
23 did argue that the -- many of the allegations are too vague.
24 So I looked at them. I've already looked at them, and I'm just
25 going through them again. My initial reaction was that they --

1 you know, I don't know about whether they would pass muster in
2 a federal court, but they clearly pass muster under Board law.
3 So I'm just looking at them again real quick. I mean, I know
4 that they are described in legal terms, creating the impression
5 of surveillance, interrogating, but that's common. And the
6 Board has held that that's sufficient. And I have to follow
7 Board law. So I'm going to deny your bill of particulars. And
8 let me just look at one more here. Yeah. I'm going to deny
9 your bill of -- request for bill of particulars.

10 As -- with respect to calling 611(c) witnesses, I believe
11 I addressed that in my order with respect to the subpoenas.
12 It's -- I mean, I know some judges don't like it. Certainly
13 Respondents don't like it. It's become common practice, and
14 it's well accepted practice and the method of proof, as I say
15 in my order. And again, I'm sure I'd be reversed in a
16 heartbeat if I preclude the General Counsel from following a
17 well-established and accepted practice. As difficult as it may
18 be for Respondents, that's Board law and procedure.

19 As to the video or audio recordings, we can address that
20 when it comes up. I know the bench -- you referred to the
21 bench book -- I know that the bench book says that they're
22 allowed in even if they were taken -- the recording was taken
23 surreptitiously, under the table. I'm not aware that there's
24 any limitation on whether it's procedural or substantive. That
25 might fall under the Federal Rules of Evidence. That's a

1 separate issue, and we can deal with that when it comes up.

2 As to any subpoenas that you may have served on the Union,
3 I'll have to wait for an objection before we address that.

4 MR. CROWLEY: Well, I didn't -- I -- this is Charging
5 Party, Alan Crowley. I didn't quite hear what the allegations
6 were, because we were not aware of any -- we were served any
7 subpoenas.

8 JUDGE WEDEKIND: Okay.

9 MR. CROWLEY: And so I'd like to see them.

10 JUDGE WEDEKIND: Okay.

11 MR. DAWSON: Certainly. I mean, they were served today
12 out of our Los Angeles office.

13 JUDGE WEDEKIND: Okay.

14 MR. DAWSON: So we will --

15 JUDGE WEDEKIND: You can deal with --

16 MR. DAWSON: -- you know, be happy to --

17 JUDGE WEDEKIND: -- that off the record. That's fine.

18 MR. DAWSON: -- sure.

19 JUDGE WEDEKIND: I guess that doesn't give you much to
20 respond to at that point. I think I've addressed them all.
21 Just in part because I was already familiar with the
22 objections, and -- or I had already addressed them. Anything
23 else before we take a break?

24 MS. DEMIROK: We would like to -- General Counsel would
25 like to move to amend the complaint and notice of hearing that

1 was issued in this case on July 21, 2015. As noted in the
2 notice of intent to amend that was filed on September 2, 2015,
3 the notice of intent to amend includes a slight amendment to
4 include Mr. Bob Beake as a supervisor and agent under sections
5 211 and 213 of the Act, and his title being vice-president of
6 human resources. And it also includes Mr. David Garcia as a
7 supervisor and agent under the Act with the title of forklift
8 manager.

9 In addition to those amendments, which were in the notice
10 of intent to amend, General Counsel for the General Counsel
11 would like to move to amend to include an additional allegation
12 that occurred on the same date that other allegations have --
13 that are alleged in the complaint, which is April 29, 2015.
14 And we'd like to allege that the employees were granted
15 benefits in that they were guaranteed that there would be no
16 layoffs over the summer, and that benefit was granted to Mark
17 Engdahl. And those are all the amendments that we'd like to
18 make at this time.

19 JUDGE WEDEKIND: it's an 8(a)(1) violation?

20 MS. DEMIROK: It is an 8(a)(1) violation.

21 JUDGE WEDEKIND: Okay. Any response from the company
22 about the amendments?

23 MR. DAWSON: Your Honor, we oppose -- we would not oppose
24 the amendment alleging supervisory status on behalf of David
25 Garcia, and would ask -- or suggest that Mr. Garcia also be

1 included in the stipulation concerning supervisory status. So
2 no objection on that. We can --

3 JUDGE WEDEKIND: Let me stop you. What does that mean?
4 That you're stipulating that he is a supervisor?

5 MR. DAWSON: He is a supervisor --

6 JUDGE WEDEKIND: Okay.

7 MR. DAWSON: -- correct. Yes.

8 JUDGE WEDEKIND: Okay. Thank you.

9 MR. DAWSON: So in regard to Mr. Beake, you know, for the
10 reasons that we outlined in putting our objection on the record
11 that the Petitioner revoke subpoena, we would oppose the effort
12 to amend the complaint in that regard. And in regard to the
13 April 29th allegation, we would oppose that amendment.
14 Understanding that leave is freely given, there doesn't seem to
15 be any reason why it wouldn't have been included in the initial
16 complaint. And we've already been given an abbreviated time to
17 prepare. Adding additional allegations at this point that were
18 within the knowledge of the parties to begin with, is not
19 appropriate. But we understand that leave is freely given.

20 JUDGE WEDEKIND: Can you just explain why this light -- or
21 this late.

22 MS. DEMIROK: Well this particular allegation didn't come
23 to light until over the weekend when a closer look at what we
24 would be putting on during the first couple of days of hearing
25 was brought in front of us. And so certain statements made in

1 preparing what they're going to testify about, other things
2 just became more evident.

3 But it is the same theory that a lot of the other
4 allegations are going under. We've also alleged that at the
5 same date, the same meeting, that there were other violations
6 that occurred during that same time. And it also includes one
7 of Respondent's supervisors who is alleged to have made other
8 8(a)(1) statements on that same date.

9 JUDGE WEDEKIND: Okay. And with respect to how much
10 notice the company is going to have, how long at this point,
11 given the stipulations on supervisory status, how long do you
12 think your case is going to take to get on?

13 MS. DEMIROK: I would expect our case to take three to
14 three-and-a-half days.

15 JUDGE WEDEKIND: Okay. So the company should be prepared
16 to perhaps start on Friday?

17 MS. DEMIROK: I think either Friday afternoon, or Monday
18 morning.

19 JUDGE WEDEKIND: Okay. Well as we go along, keep him
20 informed.

21 MS. DEMIROK: Okay.

22 JUDGE WEDEKIND: You don't want to wait -- I mean, I know
23 there's going to be a tendency to want to cut short Friday, if
24 that's a breaking point, but I'd rather not lose Friday if
25 there's any chance that we're not going to finish next week.

1 You know what I mean? So --

2 MS. DEMIROK: Okay.

3 JUDGE WEDEKIND: -- try to keep everybody --

4 MS. DEMIROK: We will put --

5 JUDGE WEDEKIND: -- informed.

6 MS. DEMIROK: -- on the case as quickly as we can.

7 JUDGE WEDEKIND: Sure. I got -- okay.

8 MS. DEMIROK: Yeah.

9 JUDGE WEDEKIND: Okay. Well as counsel graciously
10 acknowledged, there's very little standard at the Board on
11 amendments. And before we actually get into putting on
12 evidence, that's about as liberal as you can get. So I'm going
13 to grant the motion to amend to add that 8(a)(1) allegation.
14 Anything else?

15 MS. DEMIROK: We --

16 (Counsel confer)

17 MS. DEMIROK: So at this time, we would ask for some time
18 to review the subpoenaed documents.

19 JUDGE WEDEKIND: Okay.

20 MS. DEMIROK: And counsel for the General Counsel would
21 ask for two hours given the amount of documents and 1500 pages
22 that we may need to look through.

23 MR. DAWSON: No objection, Your Honor, but we would ask if
24 we could be advised as to who the witnesses are going to be
25 today.

1 JUDGE WEDEKIND: Well, is your first witness going to be
2 the management witness?

3 MS. DEMIROK: It will be.

4 JUDGE WEDEKIND: All right. Why can't we just tell him?

5 MS. DEMIROK: Yeah.

6 JUDGE WEDEKIND: Okay.

7 MS. DEMIROK: It's going to be Mark Engdahl.

8 MR. DAWSON: We have a petition to revoke that hasn't been
9 ruled upon at this point --

10 JUDGE WEDEKIND: Oh.

11 MR. DAWSON: -- for Mark Engdahl. And I -- as best as I'm
12 aware, General Counsel hasn't filed an opposition to the
13 petition to revoke.

14 JUDGE WEDEKIND: Okay.

15 MR. DAWSON: So that's --

16 JUDGE WEDEKIND: What's the basis of the petition to
17 revoke?

18 MR. DAWSON: He's out of the country.

19 JUDGE WEDEKIND: Oh. Good reason.

20 MS. DEMIROK: To our knowledge, we have not seen a
21 petition to revoke.

22 JUDGE WEDEKIND: Okay. When was it filed?

23 MR. DAWSON: That would have been filed on Monday, August
24 20 -- or 31st.

25 MS. DEMIROK: I mean they did raise the fact that he would

1 be out of the country as a basis for their motion to postpone
2 which had been denied and that is the only note -- we'll have
3 to look, but I've never seen --

4 MR. DAWSON: Your Honor, just for the record, and we can
5 obviously put the petition in evidence; but while we titled it
6 a petition to revoke, we only asked that Mr. Engdahl be excused
7 from the first -- essentially from the hearing days this week.
8 He'll be returning on Monday evening, and we've said that he'll
9 be available to testify on Tuesday of next week. So I guess
10 it's a petition to modify subpoena as opposed to revoke.

11 JUDGE WEDEKIND: Yeah, I haven't seen it. Is it in
12 NexGen?

13 MS. DEMIROK: I'm looking right now.

14 JUDGE WEDEKIND: Anybody else out of the country?

15 MR. DAWSON: Not that I'm aware of, Your Honor.

16 JUDGE WEDEKIND: Okay. So everybody else is basically
17 available? Okay.

18 MR. DAWSON: I believe so.

19 JUDGE WEDEKIND: Do you have another one?

20 MS. DEMIROK: Well, I mean he's out of the country; but,
21 of course, we would object to that, and I'd like to do it on
22 the record because --

23 JUDGE WEDEKIND: Yeah.

24 MS. DEMIROK: -- as we said in our opposition to their
25 motion to postpone, I mean, they've had plenty of notice that

1 he was involved in this. The Board Agent requested to
2 interview him during the investigation. They also were given
3 notice that he was -- he made 8(a)(1) statements as early as
4 May and June.

5 JUDGE WEDEKIND: Okay.

6 MS. DEMIROK: So I would just like to say for the record
7 that they've known of his involvement, and he has been -- he
8 was subpoenaed to be here at this time.

9 JUDGE WEDEKIND: Yeah. Okay. Well, yeah, I think we need
10 to see this subpoena the Petition to revoke, the proof of
11 service and then put it all on the record. You have --

12 MR. DAWSON: Your Honor --

13 JUDGE WEDEKIND: -- to tell me what you want, you know.

14 MS. DEMIROK: Well, I would like some sanctions.

15 JUDGE WEDEKIND: Okay. Well, that's the issue. So what
16 are --

17 MR. DAWSON: Your Honor, if I may respond on the record?

18 JUDGE WEDEKIND: Sure.

19 MR. DAWSON: While Mr. Engdahl, you know, was certainly
20 aware of his involvement, we were told that this case would be
21 decided at the end of June and it wasn't. We were told that it
22 would be decided in early July; it wasn't. Mr. Engdahl made
23 these plans; and then on July 27th, we received a complaint
24 scheduling a hearing for today. Mr. Engdahl at that point as
25 set forth in the petition, had already made non-refundable

1 arrangements to travel. It's only a week, and we don't feel
2 that any sanctions regardless would be merited at this point.

3 JUDGE WEDEKIND: Well, I have to see the petition to
4 revoke --

5 MR. DAWSON: Yes, Your Honor.

6 JUDGE WEDEKIND: -- and -- before I can rule on any of
7 this, but General Counsel is asking for sanctions so I'll have
8 to rule on it at some point.

9 MR. CROWLEY: And, Your Honor, we would also join in the
10 sanctions request additionally because it seems like there was
11 an order that all the documents be produced today in the
12 morning, and now there's 1500 pages of documents produced at
13 1:00 which is significantly going to hamper this case. And
14 this is preposterous activity by this Employer who's known
15 about this for a long time. So --

16 JUDGE WEDEKIND: Well, was there an order to issue the --
17 I mean I know that I asked you to. I didn't order it. I don't
18 have the authority to order it.

19 MR. DAWSON: No, Your Honor, there was not an order
20 requiring production in the morning.

21 JUDGE WEDEKIND: Yeah. Right.

22 MR. DAWSON: The subpoena said at 1:00 p.m.

23 JUDGE WEDEKIND: Right.

24 MR. DAWSON: That's when they were produced.

25 JUDGE WEDEKIND: Right.

1 MS. OVIEDO: And Your Honor requested them produced in the
2 morning.

3 MR. DAWSON: There was no order.

4 JUDGE WEDEKIND: I did, but I didn't order it. I'm not
5 sure I have the authority to --

6 MR. DAWSON: He also requested that you tell us who the
7 witness are, but that didn't happen either so --

8 JUDGE WEDEKIND: So I'm going to deny -- to the extent you
9 made a motion for failure to produce the documents until 1:00,
10 there was no order that I issued. And again, I'm not sure I
11 have the authority because that's considered pretrial
12 discovery. In any event, you're joining in the sanctions with
13 respect to Mr. Engdahl?

14 MR. CROWLEY: Yes.

15 JUDGE WEDEKIND: Okay. Well, do you have another
16 management witness you want to put them on notice of that you
17 want to show up in two hours?

18 MS. DEMIROK: Your Honor, if we could have a moment off
19 the record.

20 JUDGE WEDEKIND: Sure. Let's go off the record. I tell
21 you what, let's just stay off the record, okay? Take your two
22 hours. As soon as you decide, let them know.

23 MS. DEMIROK: Okay.

24 (Off the record at 1:37 p.m.)

25 JUDGE WEDEKIND: Okay. Back on the record. I understand

1 that you still have not been able to review the documents
2 because you had difficulty opening the file; is that correct?

3 MS. DEMIROK: That's correct.

4 JUDGE WEDEKIND: Okay. But -- and you would like more
5 time?

6 MS. DEMIROK: We would like more time. And assuming that
7 I mean we can see the documents tonight, we could start in the
8 morning. So we would request, you know, time until the
9 morning. However, if we still were unable to get through all
10 this troubleshooting, then, of course, we would need more time
11 before starting in the morning.

12 JUDGE WEDEKIND: Yeah. In the meantime, you -- we've got
13 two things. First of all, we can take care of my subpoena
14 order. Are you going to submit it as GC-2?

15 MS. DEMIROK: We are going to submit it as GC Number 2.

16 JUDGE WEDEKIND: Okay. Any objection?

17 MR. DAWSON: No objection, Your Honor.

18 JUDGE WEDEKIND: Okay. It's received then into the
19 record.

20 **(General Counsel Exhibit Number 2 Received into Evidence)**

21 JUDGE WEDEKIND: And then we have an outstanding issue
22 with respect to the subpoena testificandum on Mr. Engdahl.

23 MS. DEMIROK: Mr. Engdahl.

24 JUDGE WEDEKIND: Yeah.

25 MS. DEMIROK: I believe that's how you pronounce it. And

1 if you don't mind, I'd like to address the Court --

2 JUDGE WEDEKIND: Sure.

3 MS. DEMIROK: -- on that issue. So, Your Honor, I would
4 like to address the issue regarding Mr. Engdahl's subpoena for
5 appearance today. Counsel for General Counsel has looked into
6 the service of the petition to revoke Mr. Engdahl's appearance.
7 Respondent did e-file the petition to revoke on August 31st.
8 That said, service is not really the issue before the Court.
9 The issue is whether Respondent's supervisor and agent under
10 the Act, Mr. Engdahl, has complied with his subpoena and
11 whether Respondent has put forth a good faith effort in
12 insuring compliance.

13 Your Honor, while Respondent has apparently filed a
14 petition to revoke Mr. Engdahl's subpoena, you haven't ruled on
15 that petition, nor has any other administrative law judge.
16 Rather than wait for a ruling, the Respondent merely decided on
17 its own accord that they did not have to put forth the effort
18 to ensure that it's vice president of operations appeared
19 today. And in lieu of all that, counsel for the General
20 Counsel is seeking sanctions.

21 Failure to produce a witness is akin to failing to produce
22 documents. And as stated in the NLRB Bench Book, there are
23 several sanctions available at your discretion. Those
24 sanctions should be granted in this case as a failure to
25 produce Mr. Engdahl, or even make a good faith effort to do so,

1 is highly prejudicial to the General Counsel's case.

2 First, we are seeking sanctions regarding any testimony
3 that we intended to illicit from Mr. Engdahl today, including
4 statements he made and what he saw during several meetings
5 addressed in paragraphs 5(g)(1) and (2), paragraphs 5(t)(1)
6 through (4) and paragraphs 5(w)(1) through (3). In addition,
7 we are seeking sanctions regarding any testimony that we
8 intended to illicit from Mr. Engdahl that they addressed in the
9 allegation of discipline in paragraph 6(a) of the complaint and
10 the newly added allegation that Respondent granted benefits to
11 discourage Union support when Mr. Engdahl provided employees
12 with a guarantee that it would not lay off any employees in the
13 summer like it had in the past.

14 Counsel for the General Counsel seeks the following
15 sanctions. First, we are requesting that you draw an adverse
16 inference with regards to any of the testimony that we would
17 have sought to illicit from Mr. Engdahl today as I just
18 outlined. Administrative law judges may do so under Carpenters
19 Local 405, 328 NLRB 788; also under A.B.F. Inc. 355 NLRB Number
20 14 and many other Board cases.

21 Second, we are requesting that Respondent be barred from
22 asking questions on either direct or cross-examination about
23 the subject matters which we are seeking by this subpoena as I
24 had outlined. Of course, this would include the questioning of
25 any witnesses, irrespective of whether the witness is called by

1 the General Counsel, Charging Party or even Respondent.
2 Administrative law judges in the context of failing to provide
3 documents have this discretion to grant such sanctions under
4 Perdue Farms, 323 NLRB 345 and Packaging Techniques, Inc. 317
5 NLRB 1252.

6 And finally, Your Honor, we are requesting that you allow
7 counsel for the General Counsel to introduce secondary evidence
8 in support of the testimony which we sought to illicit from Mr.
9 Engdahl today. Administrative law judges are permitted to
10 allow the introduction of secondary evidence by the party who
11 has been disadvantaged under Bannon Mills, 146 NLRB 611.

12 Moreover, you should allow the introduction of secondary
13 evidence. We would additionally request an order precluding
14 Respondent from cross-examining any witnesses who will be
15 introducing such evidence. And this is appropriate under NLRB
16 C.H. Sprague & Sons, 428 F.2d 938 in the First Circuit.

17 And, Your Honor, I'd like to stress that Mr. Engdahl's
18 non-compliance is highly prejudicial to the General Counsel.
19 Documents were prepared in support of the testimony of Mr.
20 Engdahl and other documents are in the process of being
21 prepared just for the testimony of other GC witnesses. The
22 documentary evidence that we are preparing has been ordered in
23 a particular order, priority of which clearly is in the order
24 of our witnesses with Mr. Engdahl being the first anticipated
25 witness. That said, General Counsel without an order

1 expressing otherwise before the day of the hearing, should be
2 able to rely on the fact the Respondent will at least make a
3 good faith effort to comply with the subpoenas.

4 Finally, I would like to note that the subpoena issues
5 were raised by Your Honor during the pretrial conference called
6 last week. Now, although we talked about all the other
7 petitions to revoke, the Respondent failed to mention this
8 particular petition to revoke. As it had also conveniently not
9 served this petition in the same way it had the others.

10 Your Honor, you should draw whatever inference is
11 appropriate from Respondent's conduct, but there appears to the
12 General Counsel at least evidence of bad faith on Respondent's
13 part. And I would submit that you grant sanctions to the
14 fullest extent.

15 JUDGE WEDEKIND: In what way was it not served in the same
16 manner?

17 MS. DEMIROK: We received all of the other petitions to
18 revoke, along with any of the motions to postpone, directly to
19 my email or Elise's -- or Ms. Oviedo's email or both our
20 emails.

21 JUDGE WEDEKIND: And this one?

22 MS. DEMIROK: We did not receive any email with service.
23 This one was just e-filed in the e-filing system.

24 JUDGE WEDEKIND: And what happened to it? Why didn't it
25 make it into NexGen?

1 MS. DEMIROK: It did make it into NexGen.

2 JUDGE WEDEKIND: It did?

3 MS. DEMIROK: Yeah, we did find it in NexGen. But
4 apparently we're not the only ones who didn't notice it in
5 NexGen.

6 JUDGE WEDEKIND: What was it called in NexGen? I didn't
7 -- I never saw it.

8 MS. DEMIROK: I didn't see it myself, but one of my
9 colleagues here pulled it up for me.

10 And so that also raises the question of whether or not it
11 was served on the San Francisco Division of Judges which it
12 should have been.

13 MR. DAWSON: Your Honor, if I may --

14 JUDGE WEDEKIND: Yeah.

15 MR. DAWSON: -- respond? Actually, the regs say that
16 prior to the hearing that we're supposed to serve the Regional
17 Director and the party issuing the subpoena. That was the
18 Regional Director, and we served him.

19 JUDGE WEDEKIND: And could I just stop you right there?

20 MR. DAWSON: Sure.

21 JUDGE WEDEKIND: In fact, I think that's why the normal
22 procedure is for the Regional Director to forward it to the
23 judge.

24 MR. DAWSON: The regs certainly contemplate that, Your
25 Honor.

1 JUDGE WEDEKIND: And actually, I was just looking to see
2 whether that's actually in the regs. I didn't find it, but
3 that is the normal procedure is that the Regional Director
4 forwards it -- transfers it to the Judge's Division for ruling.

5 MR. DAWSON: I believe it's in 102.31(b) --

6 JUDGE WEDEKIND: It's --

7 MR. DAWSON: -- that the regional director is to forward
8 it to the Division of Judges.

9 JUDGE WEDEKIND: -- it's actually in there? Okay.

10 MS. DEMIROK: But again, service isn't the issue here.
11 There was no order.

12 MR. DAWSON: Well, Your Honor, the service is the issue.

13 MS. DEMIROK: There was no --

14 JUDGE WEDEKIND: I understand that. I just -- but I'm
15 just trying to get the --

16 MR. DAWSON: I think service is the issue in the sense
17 that as far as we knew, that -- the petition was unopposed
18 because it wasn't asking for Mr. Engdahl to be completely
19 excused from testifying. Mr. Engdahl will testify next week,
20 and General Counsel is absolutely welcome to examine him.

21 In terms of bad faith, I hate to even dignify that with a
22 response; but there -- anything that I have served which would
23 include the petition to revoke Mr. Engdahl's subpoena, has been
24 served in exactly the same fashion which would include our
25 answer. I have not emailed things out separately. Our L.A.

1 office because we're using a litigation secretary to serve has
2 served in the common form that would be in California with an
3 affidavit of service and, you know, separately filed, et
4 cetera, et cetera.

5 So in terms of the bad faith suggestion, that's absurd.
6 And I hate to use that word, but I do feel like our character
7 is being questioned, and I think that's out of bounds.

8 Third, in terms of the sanctions, to say that service
9 isn't the issue is convenient when you didn't respond to the
10 petition. Mr. Engdahl had a non-refundable deposit on a trip.
11 We filed the petition to revoke properly. It wasn't responded
12 to. As far as we knew, the General Counsel was being
13 reasonable and not objecting to it because he was going to be
14 here next week. Obviously, it turns out that's not the case.
15 But in terms of prejudicial, I think it's hard for them to make
16 a prejudice argument given what we've been forced to go through
17 in this; and granted those motions have been denied and we
18 accept that. But the fact that they have to take a witness out
19 of order I think is, you know, the fact that they structured
20 their case around the order of witnesses is their decision.
21 It's their tactic. That's unfortunate, but emergencies come up
22 and things happen. So to -- number one, to suggest that there
23 was any bad faith is ridiculous.

24 Number two, their request for sanctions in light of the
25 regional director's own failure to forward the motion -- or the

1 petition to Your Honor or to respond to the petition is
2 similarly without merit; and to say that service isn't the
3 issue, I think is a misstatement and ignores the undisputed
4 fact that this was served. I forwarded it to both Ms. Oviedo
5 and Ms. Demirok, the petition as well as the e-file receipt, as
6 well as the UPS receipts for both the Union and the Union's
7 counsel who both received it the day after it was served. So
8 to say that this was, you know, some sort of secret is I think
9 not supportable.

10 MR. CROWLEY: Your Honor, I'd like to -- I think that
11 given the efforts that they've gone at to try to get this
12 hearing continued originally because Mr. Engdahl wanted to go
13 on vacation I think was one of the first reasons, I think it
14 may be incumbent upon them to produce the document showing when
15 they planned this vacation because I think this is a
16 transparent effort to --

17 MR. DAWSON: Your Honor, that's an --

18 MR. CROWLEY: -- delay him -- excuse me.

19 MR. DAWSON: -- that's an exhibit to the petition.

20 MR. CROWLEY: Hey, hey, let me finish my --

21 MR. DAWSON: It's an exhibit to the petition.

22 MR. CROWLEY: -- let me finish --

23 JUDGE WEDEKIND: Is it? All right. Let him finish then
24 first.

25 MR. CROWLEY: So I think that's -- I think it's a problem.

1 I think there's been a lot of bad faith on the part of this
2 Employer and the counsel. And I think it's shameful that they
3 didn't properly or at least notify GC that -- as the issuing
4 party of the subpoena. And so, you know, they -- let alone
5 they have these documents here. They were supposed to produce
6 the documents, not a link to the documents, today. And now
7 we're delayed because we can't -- we can barely open this link
8 to the documents. I mean this is obviously obstructionist
9 behavior.

10 JUDGE WEDEKIND: Yeah, I don't want to get into motives,
11 though, on this. I hear you and I'm concerned about so the
12 first order that was issued by Etchingham addressed -- one of
13 the reasons was that Mr. Engdahl was not available? That was
14 one of the reasons?

15 MS. DEMIROK: That was the --

16 JUDGE WEDEKIND: The main reason?

17 MS. DEMIROK: -- they had said that was the main --

18 JUDGE WEDEKIND: The main reason.

19 MS. DEMIROK: -- the way that I took it made it seem like
20 the main reason, and that is what -- most of what we addressed
21 in our opposition to that motion.

22 JUDGE WEDEKIND: And did Judge Etchingham address that
23 issue?

24 MS. DEMIROK: He did address it.

25 JUDGE WEDEKIND: How did he address that issue? Is that

1 in here? It's in the --

2 MR. DAWSON: If I may, Your Honor, Judge Etchingham said
3 that we had not produced evidence showing his trip so we did
4 attach that as an exhibit to the petition to revoke which was
5 filed on the Union's counsel and the Union with that exhibit
6 showing when this -- when the trip was scheduled, when it was
7 paid for, et cetera, et cetera.

8 JUDGE WEDEKIND: So that was after --

9 MR. DAWSON: That --

10 JUDGE WEDEKIND: -- Judge Etchingham ruled --

11 MR. DAWSON: -- that was after Judge Etchingham ruled. We
12 did provide that evidence and just asked only that Mr. Engdahl
13 be excused from the first four days or three-and-a-half days of
14 hearing.

15 JUDGE WEDEKIND: Okay. Is that -- do you have that? Are
16 you --

17 MS. DEMIROK: Well, no --

18 JUDGE WEDEKIND: -- I assume you're going to put this --

19 MS. DEMIROK: -- that was an attachment to the petition to
20 revoke --

21 JUDGE WEDEKIND: Okay.

22 MS. DEMIROK: -- apparently which we didn't have. So they
23 do have an attachment on there. It seems like they -- the trip
24 was confirmed on the same day that the complaint issued in this
25 case.

1 JUDGE WEDEKIND: Okay.

2 MS. DEMIROK: Well, I -- but what they haven't addressed
3 is that, you know, we did talk about these issues in the
4 pretrial conference call with you.

5 JUDGE WEDEKIND: Yeah.

6 MS. DEMIROK: And they haven't given any reason about why
7 that they would -- wouldn't raise that as an issue.

8 JUDGE WEDEKIND: When is his --

9 MS. DEMIROK: And it's not our responsibility to file an
10 opposition to a petition to revoke. We do --

11 JUDGE WEDEKIND: Well, apparently according to the rules
12 which I've just read it is your obligation to refer it to me
13 which didn't happen. When is he available?

14 MR. DAWSON: He will be flying in at 10:00 on Monday
15 night, and he'll be here on Tuesday.

16 MS. OVIEDO: Your Honor, another point I would like to add
17 is that he didn't even pay for the trip on the 21st. It's --
18 that's when he made the reservation and conveniently that's
19 also the date the complaint issued so --

20 MR. DAWSON: Your Honor, how would we know when they
21 issued the complaint? We're not privy to ExGen or NexGen.
22 We're -- we got served on the 27th. We had no notice of it
23 beforehand. We were told that the case was going to be decided
24 for complaint by the end of June. It wasn't. We were told it
25 was going to be decided for complaint at the beginning of July.

1 It wasn't. At that point, you know, how long are we supposed
2 to wait to do anything while the Regional Director decides
3 whether to issue a complaint?

4 MS. OVIEDO: Well, and yet Respondent knew the ruling was
5 still pending when we met for the conference call with Your
6 Honor. So why didn't Respondent ask that Your Honor--

7 MR. DAWSON: Why would we raise it? We filed the
8 petition. We stated our reasons. If --

9 MS. OVIEDO: Well --

10 MR. DAWSON: -- it hadn't been opposed, it's not
11 incumbent-- we filed --

12 JUDGE WEDEKIND: How many allegations are you asking for
13 an adverse inference on? You only mentioned like four?

14 MS. DEMIROK: There's not -- there's --

15 MR. DAWSON: I believe there are nine.

16 JUDGE WEDEKIND: Nine total?

17 MS. DEMIROK: Ten. Yeah.

18 JUDGE WEDEKIND: Ten total?

19 MR. DAWSON: Ten with the amendment.

20 JUDGE WEDEKIND: Then you're -- you want an adverse
21 inference that -- of what?

22 MS. DEMIROK: We'd like an adverse inference against
23 anything that he would have been testifying about with respect
24 to statements that he made on those dates. And instead of, you
25 know, calling him to testify at all at this point, we would

1 like to introduce secondary evidence of the statements that he
2 made, and we would like Respondent to be precluded from cross-
3 examining any witness that we bring in here to provide that
4 secondary evidence.

5 JUDGE WEDEKIND: Are you claiming the service was improper
6 or not?

7 MS. DEMIROK: No, I'm not claiming service was improper.

8 JUDGE WEDEKIND: I don't think -- I'm not going to grant
9 you an adverse inference on it. It's a bad situation, but I
10 don't -- he's going to be available next week. There's no
11 question we're not going to finish this week. In fact, we're
12 getting started a day late now; and you haven't made any formal
13 motion for sanctions with respect to why we're starting a day
14 late --

15 MS. DEMIROK: Your Honor --

16 JUDGE WEDEKIND: -- at least with respect to the
17 documents. He paid for it the same day the complaint issued.

18 MS. OVIEDO: He didn't pay for it the same date the
19 complaint issued. He made a reservation.

20 JUDGE WEDEKIND: He made a reservation the same day. And
21 you're suggesting that he did that to avoid the trial?

22 MS. OVIEDO: I'm just saying that those are the facts,
23 but --

24 JUDGE WEDEKIND: Yeah. Where did he go?

25 MR. DAWSON: He went to I think five different cities.

1 JUDGE WEDEKIND: Uh-huh.

2 MR. DAWSON: Paris -- I don't -- it's Europe. I never --
3 I'm not really sure, but it's in the exhibit.

4 MS. DEMIROK: And, Your Honor, irrespective of the bad
5 faith, the fact is that there wasn't a ruling on it. The
6 subpoena is standing.

7 JUDGE WEDEKIND: But the fact is -- yeah, but the fact is
8 there would have been a ruling on it if it had been referred to
9 me and I knew about it. Let's take a break. Let's go off the
10 record. I want to think about it some more, okay?

11 (Off the record at 3:59 p.m.)

12 JUDGE WEDEKIND: All right. I'm not going to -- my
13 inclination -- I'm staying with my inclination. I think this
14 -- there's too much grey area here and too much at stake.
15 We're talking nine, ten allegations. An adverse inference on
16 all of them when, in fact, he is available just a few days late
17 at this point, it's -- granted it's out of order, but it's just
18 not as clear cut as it ought to be to go that far.

19 And I would note that we're also in the Ninth Circuit
20 which I think is -- makes it even more difficult to go with the
21 kind of sanctions you're looking for. So in any event -- but
22 in any event regardless of that, my inclination is that there's
23 too much grey area here because the subpoena was not referred
24 to me, and I definitely would have ruled on it and I would have
25 raised it and the fact that he is available, just late, and the

1 number of allegations involved and how important it is to the
2 case.

3 I'm going to deny your motions for sanctions, and I
4 suggest you discuss what you're going to do with trial
5 schedule. Let me know, you know, as we go along how you're
6 going to work that out. Whether you want to -- I don't know if
7 we'll get to the company's witnesses before Tuesday or not, but
8 whether you want to have a break in the trial or whatever, you
9 know, you just tell -- let me know what you want to do, what
10 you decide how we're going to deal with it. Okay.

11 MS. DEMIROK: Okay. Thank you, Your Honor.

12 JUDGE WEDEKIND: Sure. So do we have anything else to
13 discuss or do you want to break and review documents?

14 MS. DEMIROK: Well, Your Honor, we would just like to put
15 on the record again that we still don't have access to the
16 records --

17 JUDGE WEDEKIND: Okay.

18 MS. DEMIROK: -- and the documents. They appear to be
19 downloading. Once they do download, again we don't know what
20 kind of -- how they're going to be ordered or organized, if at
21 all. So we would just like to put that on the record right now
22 that we're not sure if the subpoena has been complied with as
23 far as the subpoena duces tecum.

24 JUDGE WEDEKIND: How far along are we on the download?

25 MS. DEMIROK: About halfway.

1 JUDGE WEDEKIND: Still at 50 percent?

2 MS. DEMIROK: Yeah.

3 MS. OVIEDO: Sixty percent right now.

4 JUDGE WEDEKIND: And you say you've -- as far as you know,
5 you've fully complied except for there's a few things you're
6 kind --

7 MR. DAWSON: Yeah, there's still -- the, you know, the
8 emails were the big issue because of the way the server is set
9 up. So, you know, at least on first pass, there were 40,000
10 emails. Now, we think we've been able to review those and get
11 the responsive documents, but there's still maybe some
12 lingering out there. But I would say with 95 percent certainty
13 anything else that comes out now would be an email and that
14 would be it.

15 JUDGE WEDEKIND: Okay. Assuming this gets fully
16 downloaded at say quarter of 5, what time do you want to start
17 tomorrow?

18 MS. DEMIROK: I'm going to suggest that we start at noon
19 tomorrow because I'm assuming that if other people are -- like
20 even another person could be looking at documents, they will
21 also have to be downloaded and sorted through so I'm not sure
22 -- and on top of that, we do have to prepare for a witness that
23 we weren't expecting to call.

24 JUDGE WEDEKIND: Is this another company witness?

25 MS. DEMIROK: Our first witness actually is going to be a

1 Union representative.

2 JUDGE WEDEKIND: Okay.

3 MS. DEMIROK: I know we'll be calling a company witness so
4 what we would suggest is that since we don't -- the company
5 witness will not be first, we'll give them a quick notice
6 tomorrow within an hour or two of calling them, the first
7 company witness.

8 JUDGE WEDEKIND: Okay. Is this someone you subpoenaed
9 before?

10 MS. DEMIROK: It is.

11 JUDGE WEDEKIND: Okay.

12 MR. DAWSON: Oh, no -- I mean to the extent --

13 JUDGE WEDEKIND: Okay. Well, maybe it will all go
14 smoother after that.

15 MS. DEMIROK: Are there any other outstanding petitions to
16 revoke?

17 JUDGE WEDEKIND: Good question.

18 MR. DAWSON: Only the super-secret one. No, there are
19 none.

20 JUDGE WEDEKIND: No. Okay. All right.

21 MR. CROWLEY: So we're starting tomorrow at noon?

22 JUDGE WEDEKIND: I guess so.

23 MS. DEMIROK: Thank you, Your Honor.

24 JUDGE WEDEKIND: Sure.

25 MR. DAWSON: Thank you, Your Honor.

1 JUDGE WEDEKIND: Okay. Let's go off the record.

2 (Whereupon, the hearing in the above-entitled matter was

3 recessed at 4:17 p.m. until Wednesday, September 9, 2015 at

4 12:30 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 28, Case Number

4

28-CA-150157, Shamrock Foods Company and Bakery, Confectionary,

5

Tobacco Workers' and Grain Millers International Union, Local

6

Union No. 232, AFL-CIO-CLC and at the National Labor Relations

7

Board, Region 28, 2600 North Central Avenue, Suite 1400,

8

Phoenix, Arizona 85004, on Tuesday, September 8, 2015, at 1:07

9

p.m. was held according to the record, and that this is the

10

original, complete, and true and accurate transcript that has

11

been compared to the reporting or recording, accomplished at

12

the hearing, that the exhibit files have been checked for

13

completeness and no exhibits received in evidence or in the

14

rejected exhibit files are missing.

15

16

A handwritten signature in black ink that reads "Deborah Gonzalez". The signature is written in a cursive style and is positioned above a horizontal line.

17

18

DEBORAH GONZALEZ

19

Official Reporter

20

21

22

23

24

25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 9, 2015

Pages: 49 through 196

Volume: 2

OFFICIAL REPORTERS

AVTranz

E-Reporting and E-Transcription

845 North 3rd Avenue

Phoenix, AZ 85003

(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

SHAMROCK FOODS COMPANY,

and

BAKERY, CONFECTIONERY,
TOBACCO WORKERS' AND GRAIN
MILLERS INTERNATIONAL UNION,
LOCAL UNION NO. 232, AFL-CIO-
CLC

Case No. 28-CA-150157

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004, on **Wednesday, September 9, 2015, at 1:09 p.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****SARA DEMIROK, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Tel. 602-640-2126
Fax. 602-640-2178

ELISE F. OVIEDO

NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, NV 89101
Tel. 702-388-6211
Fax. 702-388-6248

On behalf of the Respondent:**TODD A. DAWSON, ESQ.**

BAKER & HOSTELLER, LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Tel. 216-861-7652
Fax. 216-696-0740

NANCY INESTA, ESQ.

BAKER & HOSTELLER, LLP
116011 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Tel. 310-442-8833
Fax. 310-820-8859

On Behalf of the Union:**ALAN G. CROWLEY, ESQ.****DAVID A. ROSENFELD, ESQ.**

WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSSVOIR DIRE

Ivan Vaivao

135

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-3	143	143
GC-4	150	150
GC-5	150	150
GC-6 (a) and GC-6 (b)	150	150

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: Okay, let's go on the record. All right.
3 This is the second day of hearing with Shamrock Foods Company.
4 We're getting started around 1. The morning was spent I
5 understand looking at documents, reviewing documents. A few
6 preliminary matters. I just want to mention I understand
7 counsel may have a few to raise as well. I understand the 10J
8 was filed yesterday; is that correct?

9 MS. OVIEDO: That's correct.

10 JUDGE WEDEKIND: The petition, okay. In what district?

11 MS. OVIEDO: In the Ninth District, District of Arizona.

12 JUDGE WEDEKIND: This one, sorry, yeah. Ninth District.

13 Also I noted that you filed an amended answer today?

14 MR. DAWSON: That's correct, Your Honor. That was --

15 JUDGE WEDEKIND: Answer to the amendment.

16 MR. DAWSON: I'm sorry.

17 JUDGE WEDEKIND: You filed an answer to the amendment.

18 MR. DAWSON: Correct, just to the oral amendment
19 yesterday.

20 JUDGE WEDEKIND: Okay. And I notice that it admits
21 supervisory status of both --

22 MR. DAWSON: Dave Garcia and Bob Beake, correct.

23 JUDGE WEDEKIND: Bob Beake, okay. I think you might have
24 said something differently yesterday, but --

25 MR. DAWSON: I wasn't certain whether we were going to do

1 that but --

2 JUDGE WEDEKIND: The answer controls.

3 MR. DAWSON: Correct.

4 JUDGE WEDEKIND: Right, okay. Also just for the record, I
5 was not aware that you had filed a reply to General Counsel's
6 opposition to your petition to revoke when I issued my order
7 last Friday. As I have indicated in the conference call, my
8 goal is to try to get my order out as soon as possible so that
9 you would have as much notice as you can get. So you could
10 prepare for the hearing. I have reviewed the reply since then
11 and it has not changed my ruling on that -- on the issues
12 raised.

13 Now were there any other preliminary matters that we need
14 to talk about?

15 MR. DAWSON: Yes, Your Honor, on behalf of Respondent, may
16 I approach?

17 JUDGE WEDEKIND: Sure.

18 MR. DAWSON: Just wanted to -- this is a copy of the 10J
19 filing. This is just the receipt.

20 MS. OVIEDO: I'm not sure why this is relevant.

21 JUDGE WEDEKIND: We'll find out I guess.

22 MR. DAWSON: I'll describe in a moment.

23 JUDGE WEDEKIND: Okay.

24 MR. DAWSON: As Your Honor can see, the 10J is not just a
25 10J filing. It's also a motion to expedite the hearing, to

1 expedite the pleading schedule.

2 JUDGE WEDEKIND: Okay.

3 MR. DAWSON: To try the case on affidavits and to exceed
4 the page limitations.

5 JUDGE WEDEKIND: Okay.

6 MR. DAWSON: The affidavits submitted in support of the
7 10J, there are six. They total in excess of a hundred pages.
8 One was taken in April, three were in May, one was in June and
9 the sixth affidavit is one page from August 31st allegedly
10 repeats the information from earlier affidavits.

11 Now the charge in the case was filed on April 15th.
12 General Counsel has taken about five months to collect its 10J
13 evidence. They had virtually the entire universe collected by
14 mid-June. They waited for whatever reason until the date of
15 hearing opened to file the 10J and then asked the federal court
16 to expedite the hearing and to try it on affidavits. We have
17 absolutely no time to collect affidavits at this point. And
18 that's certainly because of the delay in filing the 10J.

19 That was after we were told in May that the 10J would be
20 filed. We were told in June it would be filed. We were told
21 in July it would be filed. It wasn't. Now and I was
22 personally accused yesterday of hiding the ball and bad faith
23 for not reminding General Counsel and the Union to oppose a
24 petition to revoke a subpoena that everyone concedes was
25 validly served. I'm not going to respond in kind because I

1 think accusations of bad faith are serious and they shouldn't
2 be bandied about. But it doesn't really matter what the intent
3 was. The fact is that a delay has prejudiced the company's
4 ability to defend the 10J.

5 And there will be no prejudice to the General Counsel if
6 this hearing is adjourned because they're going for the 10J and
7 the Judge can if she sees fit grant immediate relief.

8 JUDGE WEDEKIND: Let me just interrupt you. Why don't you
9 start with what you're asking me for.

10 MR. DAWSON: Sure. Yes, Your Honor.

11 JUDGE WEDEKIND: What are you asking for?

12 MR. DAWSON: At a minimum, we'd like to at least adjourn
13 through the 10J hearing, which they'd move to have on an
14 expedited basis. It may make sense depending on what the Judge
15 says in terms of the imminence of her ruling to adjourn
16 further. That gives us an opportunity to collect affidavits in
17 case the Judge does grant their motion.

18 And again, you know, when they filed the 10J is their
19 business. That's not up to us and we understand that. And,
20 you know, the motives and the timeline are what they are. But
21 the fact is that we've been prejudiced. So you know, whether
22 or not they were hiding the ball doesn't matter. We don't have
23 an ability to collect affidavits. If this case does go to a
24 10J hearing in relatively short order, we're going to be left
25 entirely without a defense.

1 JUDGE WEDEKIND: Let me just interrupt. First of all, has
2 the hearing been set in the 10J?

3 MS. OVIEDO: No, it has not.

4 JUDGE WEDEKIND: Okay. My response to you is make your
5 arguments to the District Court Judge. Okay. We have had
6 several motions to postpone; the Associate Chief Judge has
7 denied them. We've had enough delays starting this hearing
8 already. We're going to proceed with the witnesses we've
9 already scheduled. Again, if you have difficulties responding
10 to the 10J, you can make that argument to the District Court
11 Judge.

12 MR. DAWSON: Thank you, Your Honor.

13 JUDGE WEDEKIND: Sure. Anything else on this side?

14 MR. DAWSON: No, Your Honor.

15 JUDGE WEDEKIND: Okay. How about on the General Counsel
16 side?

17 MS. OVIEDO: Your Honor, we would like to address just
18 some issues that came to light when we were reviewing the
19 subpoena documents that were produced. And so we had --

20 MS. DEMIROK: Your Honor, as we were reviewing the
21 documents, it became abundantly clear that they were not
22 responsive to the subpoena. There's numerous requests for
23 which there are no documents provided. And it just so happens
24 that the documents that were not provided are directly in line
25 with the reply that they had filed on the 5th. So the

1 documents that they objected to in providing are the ones that
2 have not yet been provided. And owing to the fact that we've
3 had so many issues with this FTP site, we would respectfully
4 request that any further responsive documents be submitted to
5 us in hard copy. But I mean we can go through the laundry list
6 of documents that have not been provided.

7 JUDGE WEDEKIND: Well, let's just go over the hard copy
8 issue. Any objection to that?

9 MR. DAWSON: No objection, Your Honor, but we don't -- I
10 mean we don't have printing facilities readily available. We
11 have a Kinko's that we use to print out the 10J. So you know,
12 as long as there's no holdup with them, we should be able to
13 print those out. But we still have to get them Bates labeled.

14 MS. OVIEDO: We would be willing to forego hard copies if
15 something can be arranged logistically where even if they just
16 submitted a separate file saying okay, this is payroll records.
17 This is whatever. This is responsive to paragraph whatever in
18 the subpoena request.

19 JUDGE WEDEKIND: Separate --

20 MS. OVIEDO: We would be willing to do that as long as the
21 files are in separate folders on the FTP site. Because the way
22 it stands now, there's only one single zip drive and in order
23 to view any of the documents, you have to wait until the entire
24 zip drive opens. So that takes several hours.

25 MS. DEMIROK: And also if those separate folders are going

1 to contain a lot of documents of the same type, those would
2 have to be further delineated down so that the file itself was
3 not -- it's so big as to take hours to download. I mean
4 they're going to have to be small files.

5 MS. OVIEDO: And we are willing to forego Bates numbers if
6 they're willing to identify the documents by a subpoena
7 paragraph number.

8 MR. DAWSON: I don't think we would forego Bates labeling
9 just in case some of them are used as General Counsel exhibits.
10 I think it'd be better to have the Bates label ID. I can check
11 with the production folks and ask them, you know, if they
12 uploaded them individually, document by document, it'll
13 probably take longer. So it may be easier just to do a hard
14 copy production. But I would note that a hard copy production
15 is going to be, you know, essentially one giant file. Just as
16 the FTP site is. But I can certainly check with them and ask
17 them, you know, what their ability is in terms of turning that
18 around.

19 As I said, it may be easier just to, you know, go to
20 Kinko's again and print out copies.

21 JUDGE WEDEKIND: Well, this sounds like it could be a big
22 problem in the future. It's the first time I've encountered
23 this and it's obviously a problem. The subpoena requires you
24 to produce documents and make them available at a time certain
25 and in effect by putting them all in one exhibit file, they

1 don't get it at the time they requested it. It takes hours
2 until they can get it later. So I think that's a problem. So
3 I'll grant the request. Either paper or each response, if
4 you're responding to a certain paragraph, would be in a
5 separate file. Okay. Not each document. Each, if you're
6 responding to paragraph 5, that will be in a document. Okay?
7 So I'll grant that request.

8 So how about the missing documents issue?

9 MS. DEMIROK: Just for starters, subpoena request numbers
10 1 through 7, we do not have documents responsive to Art Manning
11 or Zack White. I believe those are the only two individuals
12 whom Respondent has not stipulated are supervisors under 211 or
13 agents under 213.

14 JUDGE WEDEKIND: White and Manning?

15 MS. DEMIROK: Zack White and Art Manning.

16 JUDGE WEDEKIND: Okay. Let's just start with that. Is
17 this helpful to just go through each one? Is that what you'd
18 like to do?

19 MS. DEMIROK: Sure.

20 MR. DAWSON: Sure.

21 JUDGE WEDEKIND: Okay. You're saying there's no
22 documents? No documents?

23 MS. DEMIROK: No, Your Honor.

24 JUDGE WEDEKIND: Okay.

25 MR. DAWSON: For Manning or White. The problem, Your

1 Honor, is they've asked for things like discipline and I think
2 layoff and recall evidence and Manning and White don't have any
3 role in that. They don't really access email as part of their
4 daily activities. And I think even in the declarations that
5 were submitted with the 10J, the affiants were saying that, you
6 know, they thought that they needed approval from the
7 supervisors on things which is true. So we did, you know, we
8 did produce on the supervisors.

9 And just for frame of reference, there are kind of
10 essentially four levels of warehouse -- in warehouse
11 management. There's Mark Engdahl who is not typically in the
12 warehouse, who's the VP. There's Jerry Kropman who reports to
13 him. There's Ivan Vaivao who reports to Jerry. There are
14 managers who report to Ivan and then there are supervisors who
15 report to the managers.

16 The floor captains are below that structure. And the
17 supervisors themselves don't even have authority to issue
18 discipline beyond a written warning without approval of a
19 manager. So they're just -- there aren't -- the documents
20 aren't there to show that Manning and Zack White exercise
21 authority that they don't have.

22 MS. OVIEDO: Your Honor, if I may, responsive -- what
23 would be responsive to at least just in like paragraph 1 for
24 instance, would be their job title, their job description and
25 we didn't even get anything like that.

1 JUDGE WEDEKIND: So you're saying you got nothing?

2 MS. DEMIROK: Nothing.

3 JUDGE WEDEKIND: So the question is, why did they get
4 nothing if that's correct?

5 MR. DAWSON: I believe that we admitted in the complaint
6 that their job title is floor captain.

7 MS. OVIEDO: No, you actually contested that in your
8 answer.

9 MR. DAWSON: I don't believe we did. You said general
10 warehouse associate.

11 MS. OVIEDO: Yes, you did.

12 MR. DAWSON: I mean we can stipulate that they serve as
13 floor captains. That's true.

14 JUDGE WEDEKIND: That's not all they ask?

15 MS. OVIEDO: No, it's not.

16 MR. DAWSON: No, but they're saying they wanted something
17 with the job title. I don't think the job title is really in
18 dispute.

19 MS. DEMIROK: That's not what we're saying.

20 MS. OVIEDO: I'm providing you a very clear example of
21 something that you would -- that they would have in your
22 control that was not produced pursuant to the subpoena. And
23 that is a clear example and I'm sure there's far more documents
24 that would be responsive as well.

25 JUDGE WEDEKIND: And they can't agree to the supervisor

1 status or agency based on the job title. So they're obviously
2 seeking more than that and even on the face of it, they're
3 seeking more than that. So the question is why wasn't it
4 provided?

5 MR. DAWSON: Your Honor, we've looked through and we
6 looked through the discipline. We looked through emails.
7 We've looked through safety observations. We've looked through
8 performance reviews for every associate in the warehouse. I
9 mean we're talking about thousands and thousands and thousands
10 of documents. There's nothing out there with Manning or
11 White's name on it.

12 Now you know, yes, of course, we can produce -- I imagine
13 we have something that shows what their title is. We were
14 looking for things a little more substantive.

15 JUDGE WEDEKIND: Well, what about a job description?
16 Isn't there a job description for a floor captain?

17 MR. DAWSON: For a floor captain? I --

18 THE COURT REPORTER: Your Honor, I'm sorry, my record has
19 stopped recording.

20 JUDGE WEDEKIND: Sure, sure.

21 THE COURT REPORTER: I'm sorry. Give me one moment
22 please. I'm so sorry. Something happened.

23 (Off the record at 1:23 p.m.)

24 JUDGE WEDEKIND: Are we back on?

25 THE COURT REPORTER: We are.

1 JUDGE WEDEKIND: All right. With respect to producing
2 documents, I did grant the General Counsel's motion that from
3 here on out, any documents produced shall be in paper form or
4 shall be in separate files by the response, when they're
5 responding to a particular paragraph, that will be a separate
6 file.

7 MS. OVIEDO: A particular paragraph of the subpoena.

8 JUDGE WEDEKIND: Of the subpoena, yes. Okay. And now
9 we're dealing with General Counsel has reviewed the documents
10 that were provided yesterday and apparently there are no
11 documents whatsoever in response to paragraphs 1 through 7 of
12 the subpoena regarding Mr. White and Mr. Manning. Both of whom
13 the company to date has denied -- as the company's denied that
14 they are supervisors or agents.

15 Now, the company says that they couldn't find any
16 documents where they had -- I believe you said where they had
17 evaluated or disciplined anyone? Is that what you said?

18 MR. DAWSON: Well, just looking through the subpoena,
19 interviewed, laid off, recalled, formulation of labor relations
20 policies, decisions affecting operations, obtaining credit or
21 authorization or making of purchases. And these were things
22 that we looked for. They're just not -- they're not there.

23 JUDGE WEDEKIND: Okay. Did you look for job descriptions?

24 MR. DAWSON: I believe that we did, Your Honor. I, you
25 know, because of the compressed timeframe, the collection of

1 documents and the preparation of witnesses, I've had to be
2 divided up. I will check --

3 JUDGE WEDEKIND: So there's nothing showing the job title
4 for these four individuals, their duties, their authority and
5 responsibilities, how much they make, their fringe benefits,
6 their work schedules? Nothing at all?

7 MR. DAWSON: No, I'm sure that that's out there. I guess
8 we were focusing on substantive, you know, supervisors.

9 JUDGE WEDEKIND: Well, but I mean it's not your purview to
10 decide what to turn over and what not to turn over.

11 MR. DAWSON: I agree with you, Your Honor.

12 JUDGE WEDEKIND: Okay.

13 MR. DAWSON: The problem is and I understand that Your
14 Honor's already ruled on this issue, but you know, General
15 Counsel's taken a full day to review the documents that we did
16 produce and that's distilled down from a universe of probably
17 10 to 15 times what we turned over. There are only so many
18 hours in a day and so many eyeballs on a human being. So --

19 JUDGE WEDEKIND: Well, there are only two that you didn't
20 stipulate to. Manning and White. And seems to me a good faith
21 effort, the very first paragraph of the subpoena.

22 MR. DAWSON: The reason that we stipulated to the others
23 though is because, you know, we haven't had a chance to really
24 look at the evidence. We stipulated to the evidence once we
25 saw what the -- I mean frankly the evidence would not have

1 supported an argument against supervisory status.

2 JUDGE WEDEKIND: Okay.

3 MR. DAWSON: And so in good faith, we stipulated to that
4 yesterday because we don't really have a good position on them.

5 JUDGE WEDEKIND: Okay.

6 MR. DAWSON: In regard to the others, I think we have a
7 very good position. And as I said, even in the declarations
8 with the 10J, you know, these are not management people.

9 JUDGE WEDEKIND: Well, that's not -- I've heard their
10 argument.

11 MR. DAWSON: Sure.

12 JUDGE WEDEKIND: The issue here is just responding to the
13 subpoena. Not whether they are actually supervisors.

14 MR. DAWSON: I understand.

15 JUDGE WEDEKIND: So let's hear from the General Counsel.
16 What is it you want?

17 MS. DEMIROK: Well, we would like -- I would seek
18 sanctions on these and any -- there should be adverse
19 inferences drawn based on their supervisory status. And we
20 should be able to introduce secondary evidence in which they
21 can't cross-examine on that.

22 MR. DAWSON: Your Honor, I object to that strenuously.
23 We're not talking about animus or things of that sort. We're
24 talking about denying someone the protection of the Act. If
25 there's an adverse inference that these folks are supervisors,

1 that means they have no right to engage in concerted activity
2 and that's not appropriate.

3 MS. OVIEDO: Your Honor, we don't even have their
4 personnel files.

5 JUDGE WEDEKIND: Yeah, why didn't you produce the
6 personnel file?

7 MR. DAWSON: I don't believe -- where is the request for
8 personnel files?

9 MS. OVIEDO: It's in item number 2.

10 MR. DAWSON: You've asked for employment applications,
11 work histories and performance appraisals. You know, we can,
12 you know, again we'll pull it. You know, we asked also for a
13 confidentiality order because this is -- and there's going to
14 be pay issues and so forth in there. You know, there's only so
15 much we can do.

16 JUDGE WEDEKIND: Well, it doesn't sound like you did the
17 basic. So I'm going to grant some sanctions. The question is
18 what? So tell me exactly what you want.

19 MS. DEMIROK: Well, we would like to be able to put on
20 witnesses to discuss what the duties are of these floor
21 captains, particularly witnesses who have personal knowledge of
22 what the floor captains do. And I think regarding that topic,
23 they shouldn't be able to be cross-examined.

24 MR. DAWSON: Your Honor, if I may respond, why don't we
25 put Art Manning and Zack White on the stand and ask them what

1 their duties are? Seems like that's --

2 JUDGE WEDEKIND: Well, it's not my case and it's not your
3 case. It's the General Counsel's case.

4 MR. DAWSON: Well, that's true.

5 JUDGE WEDEKIND: I'll let you call a witness and --

6 MR. DAWSON: But the General Counsel is asking for
7 something that's going to deny some of the protection of the
8 Act.

9 JUDGE WEDEKIND: But it's not their fault. All you had to
10 do was respond to the subpoena.

11 MR. DAWSON: Well, Your Honor, I still believe --

12 JUDGE WEDEKIND: It doesn't sound like you even did a good
13 faith effort to be honest. So that issue is over with.

14 I'm going to grant -- you're asking for I think you said
15 put on secondary evidence. I'm granting that. You said you
16 still want to put on -- what witnesses do you want to put on?

17 MS. DEMIROK: I would put on some current employee
18 witnesses that will testify as to what the duties are of floor
19 captains.

20 JUDGE WEDEKIND: Okay. And Respondent cannot
21 cross-examine them as to that?

22 MR. DEMIROK: On that particular issue.

23 JUDGE WEDEKIND: I'm granting you that. What else do you
24 want?

25 MS. DEMIROK: Well, if there are any responsive documents,

1 they shouldn't be able to introduce them themselves.

2 JUDGE WEDEKIND: You don't want them to be able to put on
3 any evidence at all --

4 MS. DEMIROK: That's right.

5 JUDGE WEDEKIND: -- to rebut your evidence. I'm granting
6 that as well.

7 MR. DAWSON: Your Honor, this is --

8 JUDGE WEDEKIND: I granted it. I granted it.

9 MR. DAWSON: All right. Just one clarification.

10 JUDGE WEDEKIND: Yeah.

11 MR. DAWSON: We can't call Art Manning and Zack White to
12 testify about their own duties; is that the ruling?

13 MS. DEMIROK: That's what we would be seeking and that is
14 in the --

15 JUDGE WEDEKIND: It's granted; I'm granting it, yeah.
16 Yeah. All you had to do was follow Respondent's subpoena. You
17 didn't do it. Okay. Is that all?

18 MR. DAWSON: Your Honor, we said it was going to be a
19 rolling production. We produced 2,000 documents. I mean
20 again --

21 MS. OVIEDO: And a lot of unresponsive documents by the
22 way.

23 MR. DAWSON: -- it's the amount of response --

24 JUDGE WEDEKIND: I've already heard your arguments. This
25 is so basic. This is like -- that was the easiest paragraph to

1 respond to. At least part of it and it didn't happen. As to
2 adverse inferences, you can address that in your brief. Okay.

3 MS. DEMIROK: Thank you, Your Honor.

4 JUDGE WEDEKIND: What else is missing?

5 MR. DAWSON: Just again, just for clarification, Your
6 Honor, are we going to be permitted to ask questions testing
7 personal knowledge as opposed to the substantive duties
8 themselves?

9 JUDGE WEDEKIND: You can make any objections under the
10 Federal Rules of Evidence that are appropriate. Okay. So if
11 -- but again, we're talking about secondary evidence here. So
12 I'm not saying that I'll rule in any particular way with
13 respect to for example hearsay. It's secondary evidence. I
14 might actually allow hearsay. We'll take it one at a time.
15 Okay. But you're not precluded from making objections.

16 MR. DAWSON: Okay, I just wanted to clarify -- my
17 understanding from General Counsel is they're going to put on
18 witnesses to testify about the duties who have personal
19 knowledge of those duties. Understanding that we can't
20 cross-examine regarding the duties themselves, are we going to
21 be able to cross-examine for the basis of personal knowledge to
22 the extent that it's not established on direct?

23 JUDGE WEDEKIND: You can make an objection about whether
24 it's based on personal knowledge or not.

25 MR. DAWSON: Okay.

1 JUDGE WEDEKIND: And we'll take it from there. We'll talk
2 about it on an individual basis. Make your objections. Okay.

3 MR. DAWSON: Thank you, Your Honor.

4 MS. DEMIROK: I'm going to move to request number 8. This
5 request is -- we're requesting documents that show or describe
6 what was said during a town hall staff meeting about March
7 31st, 2015 at Respondent's warehouse facility, including all
8 documents that indicate the time, date and location, the
9 identities of those who participated and were present for the
10 meeting. We did get some responsive documents and we did
11 receive what looks to be a slide show that was presented. But
12 if there are any other related documents, I would request that
13 they produce them. However, I don't know if they're out there,
14 but I would assume that there are.

15 JUDGE WEDEKIND: Are you saying you don't believe that
16 you've received everything?

17 MS. DEMIROK: There's almost no emails at all in the
18 documents that they produced.

19 MR. DAWSON: Your Honor, if I may, I'm sorry. I don't
20 mean to interrupt. Sorry. Go on.

21 JUDGE WEDEKIND: Well why would there necessarily be an
22 email?

23 MS. DEMIROK: Coordinating this meeting, planning this
24 meeting, who's going to speak at this meeting, what content are
25 we going to cover during this meeting.

1 JUDGE WEDEKIND: Okay. Documents are shown to describe
2 what was said. That's past tense, right? What was said during
3 a town hall meeting. So wouldn't those be documents that came
4 afterwards?

5 MS. DEMIROK: Yeah, that's correct and if there was --
6 excuse me, Your Honor.

7 JUDGE WEDEKIND: Wouldn't those be documents after the
8 meeting?

9 MS. OVIEDO: Well, but for example, if you're preparing an
10 outline for this meeting, I mean you're going to be following,
11 you know, an outline of what's going to be discussed at this
12 meeting.

13 JUDGE WEDEKIND: Did they produce any documents before the
14 meeting? Any emails?

15 MS. OVIEDO: No, Your Honor.

16 JUDGE WEDEKIND: About the meeting before?

17 MS. DEMIROK: Or after the meeting --

18 JUDGE WEDEKIND: Or after?

19 MS. DEMIROK: -- and there was alleged misconduct during
20 this meeting is what we take their position to be and
21 there's --

22 JUDGE WEDEKIND: Okay, any response on the email issue?

23 MR. DAWSON: Yes, Your Honor. It says what was said at
24 the meeting. The PowerPoint says what was said at the meeting
25 and as Your Honor pointed out on page 2 of your order, the

1 subpoena does not request all documents. It just requests
2 documents. We produced documents. I don't, you know, I don't
3 see that there's, you know, we did produce documents on the
4 town hall meeting. I don't believe that there's a substantial
5 amount of disagreement over what was covered, not that that
6 makes a difference in regard to the subpoena. But as Your
7 Honor pointed out, it does not say all documents. It says
8 documents.

9 JUDGE WEDEKIND: Well, you're under an obligation to make
10 a good faith effort to produce responsive documents. Did you
11 search for emails?

12 MR. DAWSON: Yeah, I believe -- I'd have to check. I
13 can't answer that, but yeah, I believe we did. I mean there
14 may be like emails with the PowerPoint attached saying here's
15 what's going to be presented. But again, I -- we produced the
16 PowerPoint.

17 JUDGE WEDEKIND: So you got the PowerPoint.

18 MS. DEMIROK: We did get the PowerPoint.

19 JUDGE WEDEKIND: Okay. You want them to do a search of
20 emails?

21 MS. DEMIROK: I would like them to do a search of emails.

22 JUDGE WEDEKIND: Okay. Check to see if you did a search
23 of emails and if you haven't, do one. And include both before
24 and after the meeting. And let us know what you find.

25 MR. DAWSON: Yes, Your Honor.

1 MS. DEMIROK: Request number 9 is seeking documents that
2 would show or reference any kind of complaints regarding
3 healthcare benefits by employees to any of Respondent's
4 managers or supervisors within the time period. And I believe
5 this would include notes from there was a series of meetings
6 that were held from in February and in March and including this
7 March 31st meeting where employees raised concerns about the
8 healthcare benefits. And there has been nothing responsive to
9 that item.

10 JUDGE WEDEKIND: Okay. And tell me again why that's
11 relevant? I know this was addressed in the petition to revoke.

12 MS. DEMIROK: So there are allegations that they were
13 seeking grievance, you know, soliciting grievances from
14 employees at these meetings.

15 JUDGE WEDEKIND: Okay.

16 MS. DEMIROK: So you know, what was elicited would be
17 relevant in that part. Also, it's -- the discriminatee in this
18 case, he made a particular comment about healthcare benefits.
19 And that's directly at issue with his discharge. And that was
20 at the March 31st meeting. So that's why those would be
21 relevant in this case.

22 JUDGE WEDEKIND: Okay. And you say you got nothing?

23 MS. DEMIROK: Nothing.

24 JUDGE WEDEKIND: Okay. Explain why?

25 MR. DAWSON: Your Honor, again it's a rolling production.

1 That's a pretty hard category to search. It's not like there's
2 a central repository for healthcare complaints. You know,
3 we've got as I mentioned I think the initial number was 40,000
4 emails which we're trying, you know, to piece through. We said
5 yesterday it would be a rolling production. And to the extent
6 that there's something out there, we'll turn it over.

7 JUDGE WEDEKIND: Okay. That's good enough for me for now.

8 MS. DEMIROK: If I might add, there's also on item number
9 15, I believe this is the one where documents that -- it would
10 show what was discussed at all of these meetings that I
11 referenced. And we didn't get anything responsive to that item
12 either. So not only is it about the employee concerns about
13 healthcare benefits, but just in general, you know, what to --
14 who was at these meetings, what did they say, were there any
15 communications between Respondent's managers, supervisors? And
16 there's nothing.

17 JUDGE WEDEKIND: How many meetings do you know about?

18 MS. DEMIROK: We have direct evidence of at least four of
19 these meetings but there is also evidence that these meetings
20 were held on a daily basis for a few days in a row in February,
21 again at the end of the February, again in March. Met with
22 every employee at the warehouse in small groups.

23 JUDGE WEDEKIND: Okay. And how many meetings -- those
24 four meetings, are those the ones that are alleged in the
25 complaint?

1 MS. DEMIROK: Yes.

2 JUDGE WEDEKIND: Okay. Now why are the other ones
3 relevant?

4 MS. DEMIROK: Well, I don't need to know exactly -- we
5 don't need responsive documents for those, but we do need the
6 ones that were at least responsive --

7 JUDGE WEDEKIND: Those four meetings?

8 MS. DEMIROK: -- to those four meetings, yes.

9 JUDGE WEDEKIND: Okay. Well, let's start with that. Why
10 aren't there any documents?

11 MR. DAWSON: Your Honor, I mean again I have to keep
12 giving the same answer. We turned over 2,000 documents. The
13 subpoena was not so limited in terms of which meetings they
14 were looking for. We objected on that basis. There were a lot
15 of meetings and, you know, we can certainly -- if General
16 Counsel is willing to narrow that to the four meetings at
17 issue, you know, we can certainly do that. But at this point,
18 you know, we're looking through essentially two years of
19 Outlook appointments and so forth for 15 different supervisors
20 and unit employees. I mean that's tens of thousands of --
21 again, if we can limit it to the four dates alleged in the
22 complaint, that's a different story. That's an easy, you know,
23 that's I think relatively easier to do.

24 JUDGE WEDEKIND: Okay. So have you even started looking
25 for documents with respect to 15 or not?

1 MR. DAWSON: Yes. Yeah, we have. We are, we're looking
2 through Outlook files.

3 JUDGE WEDEKIND: And you haven't found any?

4 MR. DAWSON: We've found a couple and that was last night
5 and we're going to do another upload as we discussed earlier.
6 So you know --

7 JUDGE WEDEKIND: Okay.

8 MR. DAWSON: -- we'll have -- we will have some Outlook
9 stuff on that that will show who was at the meetings.

10 JUDGE WEDEKIND: Okay. So that's fine. So for now,
11 limited to those four meetings and turn over whatever you have.

12 MS. DEMIROK: And I would just like to say for the record
13 that, you know, their -- Respondent's motivation is at issue in
14 this case. And these meetings were explicit Union prevention
15 meetings. So in that vein, all of these meetings and what was
16 said and who was there --

17 JUDGE WEDEKIND: Well, I don't doubt with respect to those
18 four, absolutely. Okay.

19 MS. DEMIROK: Okay.

20 JUDGE WEDEKIND: So that's what we're going to limit to
21 for now. Those four meetings.

22 MS. DEMIROK: Thank you.

23 MS. OVIEDO: Yeah, for the record, I would just like it
24 noted that even those four, there stroll is relative
25 information showing knowledge, notice, hostility, animus. So

1 for that reason, I would just like it noted that we want all
2 responsive documents, not just those four dates. It can be
3 relevant for other purposes.

4 JUDGE WEDEKIND: Okay. But you know, I take it you have
5 testimony -- well, you have evidence that with respect to
6 knowledge, animus, motive, from the four meetings?

7 MS. OVIEDO: For just the ones alleged, correct.

8 JUDGE WEDEKIND: You do? Okay. So everything else might
9 be cumulative?

10 MS. OVIEDO: Your Honor, here's the problem is that when
11 we allow Respondent to supplant its opinion for what is
12 violative, then we're limiting it to just oh, okay, we think
13 this is relevant and we're, you know --

14 JUDGE WEDEKIND: I'm not disputing that. I'm not saying
15 that.

16 MS. OVIEDO: Okay.

17 JUDGE WEDEKIND: Respondent doesn't control what -- they
18 can't pick and choose what they provide under the subpoena. Is
19 that what you're talking about?

20 MS. OVIEDO: Right.

21 JUDGE WEDEKIND: Right. Okay. I agree with that.

22 MS. OVIEDO: Okay.

23 JUDGE WEDEKIND: But right now, we're limiting it to the
24 four. We're going to get everything you got on that.

25 MS. OVIEDO: Okay. And just again, the fact that this has

1 been a rolling production, I think should also be noted for the
2 record since it was ordered that they produce these documents
3 on Tuesday when the record opened.

4 JUDGE WEDEKIND: Okay. What else is on this --

5 MS. DEMIROK: Okay. So item number 17, documents that
6 show or describe conversation which Mark Engdahl participated
7 about January 28th, 2015 at the warehouse which generally was
8 about Unions and Union activity including the day, time, and
9 location of this. This is referring to there's a meeting on
10 January 28th for all the warehouse employees. I would -- a
11 slideshow would be at least -- if it was used, which I believe
12 it was, would be responsive to this item. And we haven't
13 received anything, let alone the slide show that was used
14 during that meeting.

15 MR. DAWSON: And I believe this was one of the four
16 meetings that we had just -- at least my understanding is this
17 is one of the four meetings that we had just discussed. And
18 we'll agree to go back and find whatever we have on those.

19 JUDGE WEDEKIND: Okay. You meant the PowerPoint. Is that
20 what you meant, the slideshow --

21 MS. DEMIROK: Uh-huh.

22 JUDGE WEDEKIND: -- PowerPoint?

23 MS. DEMIROK: And this meeting is quite a bit different
24 than the other meetings, in that, this meeting was with a very
25 large number of warehouse employees as opposed to the small

1 groups of the other ones. So the nature and content of this
2 meeting would be --

3 JUDGE WEDEKIND: And again, I was listening, but
4 apparently -- so did they produce the slideshow or not?

5 MS. OVIEDO: They did not.

6 MS. DEMIROK: Not for this particular one.

7 JUDGE WEDEKIND: How do you know that there is one?

8 MS. DEMIROK: We have knowledge.

9 MR. DAWSON: I'm not --

10 JUDGE WEDEKIND: You have knowledge. Okay.

11 MR. DAWSON: I'm not aware of any slideshow, but we can --

12 JUDGE WEDEKIND: Okay.

13 MR. DAWSON: -- certainly check.

14 JUDGE WEDEKIND: Okay.

15 MS. DEMIROK: I just want to be clear for the record as
16 well, that what I think would be responsive to these requests,
17 in regards to each of these meetings, were any notes taken by
18 Respondent's managers or supervisors during those meetings.
19 And I do -- we do have evidence that notes were taken at at
20 least one of those meetings. So I would expect to see those.

21 JUDGE WEDEKIND: Okay. Please look for those as well.

22 MR. DAWSON: Absolutely.

23 MS. DEMIROK: Item number 21, there was an objection to
24 this, but I believe in your order you ruled that they would
25 have to produce anything that was in their -- within

1 Respondent's possession or control. We didn't receive anything
2 responsive to item number 21 regarding the whereabouts of Art
3 Manning. I would just request that they take a look for that,
4 either with text messages, emails, or any other notes that were
5 taken by any of Respondent's supervisors or managers with
6 regards to any conversation they may have had with Art Manning
7 or Art Manning himself.

8 JUDGE WEDEKIND: Did you -- well, let's -- does Art
9 Manning carry a company credit card?

10 MR. DAWSON: No.

11 JUDGE WEDEKIND: Okay. Did you look for anything?

12 MR. DAWSON: Yeah. We have nothing on that. I mean
13 credit card receipts, credit card statements, you know, text
14 messages. I mean we have, I don't know, four dozen managers.
15 We haven't polled every manager to see, you know, did you get a
16 phone call from Art Manning that you could produce the phone
17 records for. But, you know, no, we don't have anything, credit
18 card receipts or credit card statements, or anything of that
19 sort. This was an off-hours issue. It was not, you know,
20 during the workday.

21 MS. DEMIROK: General Counsel --

22 JUDGE WEDEKIND: Is that true?

23 MS. DEMIROK: That may be true. I would suggest that
24 General Counsel would limit it to any text messages or any
25 other kind of communications that they with particular

1 managers. And I could give a list of those particular managers
2 if they'd be willing to look into those.

3 MR. DAWSON: Well, yeah, we would, absolutely.

4 JUDGE WEDEKIND: Okay, sure.

5 MS. DEMIROK: Okay.

6 JUDGE WEDEKIND: All right. You want to do that off the
7 record or --

8 MS. DEMIROK: We can do that off --

9 JUDGE WEDEKIND: Okay.

10 MS. DEMIROK: -- the record.

11 JUDGE WEDEKIND: All right. Do you plan on calling Mr.
12 Manning, General Counsel?

13 MS. DEMIROK: We're going to have to reconsider that. But
14 given your earlier ruling, we will have to take our time and
15 think about that.

16 JUDGE WEDEKIND: All right, yeah. I mean even assuming
17 that if I imposed some kind of adverse inference that he is a
18 supervisor within their control, do you think a company can
19 make a supervisor turn over their personal credit card
20 receipts?

21 MS. OVIEDO: Your Honor, we're not contesting that they
22 have control over his personal credit card receipts. What
23 we're saying though is that, at the very least, they should be
24 searching their manager's text messages and email accounts,
25 because, assumingly, Art Manning made these other managers and

1 supervisors aware of his whereabouts on that day.

2 JUDGE WEDEKIND: In other words, communications from Mr.
3 Manning to them or from them --

4 MS. OVIEDO: Right.

5 MS. DEMIROK: -- to Mr. Manning?

6 MS. OVIEDO: Because that's obviously in their control.

7 JUDGE WEDEKIND: Right, sure. Sure. Okay. I agree with
8 that.

9 So search your emails --

10 MS. OVIEDO: Text messages, notes.

11 JUDGE WEDEKIND: -- text messages.

12 On that particular day, the day before, the day after?

13 MS. OVIEDO: Memorializations of phone conversations with
14 Art Manning that day.

15 JUDGE WEDEKIND: Anything about that day.

16 MS. DEMIROK: That --

17 MS. OVIEDO: Correct. Limited to just one day.

18 MS. DEMIROK: And maybe a week after that, because he may
19 have had --

20 JUDGE WEDEKIND: Sure.

21 MS. DEMIROK: -- later conversations about --

22 JUDGE WEDEKIND: I don't mean -- I meant --

23 MS. OVIEDO: Referencing that day.

24 MS. DEMIROK: -- emails about what happened that day.

25 Sure, okay.

1 MS. DEMIROK: And I'll just note that item number 23 is --
2 there were no responsive documents, including -- but we have
3 already covered that. That is a particular meeting that would
4 be covered in the series of meetings that we were looking for
5 responsive documents to.

6 JUDGE WEDEKIND: The same as 15 and 17?

7 MS. DEMIROK: That's correct.

8 JUDGE WEDEKIND: Okay. So including notes?

9 MS. DEMIROK: Including notes. And again, items 24
10 through 27 also relate to particular meetings that were
11 referenced in the complaint, and which we have no responsive
12 documents to.

13 JUDGE WEDEKIND: Okay. Any reason they don't have -- is
14 this the same problem?

15 MR. DAWSON: Same issue, yeah. Yes, Your Honor. Sorry.

16 JUDGE WEDEKIND: Okay.

17 MS. DEMIROK: And as far as item number 28, we did receive
18 the personnel file for Mr. Thomas Wallace. However, there's no
19 reference in the file to discharge that I saw. And so, if they
20 do have any termination papers or any other kind of documents
21 that would reference his discharge, which would also be
22 responsive to item number 29 and item number 30, item number
23 31 --

24 JUDGE WEDEKIND: So you got about --

25 MS. DEMIROK: -- and item --

1 JUDGE WEDEKIND: -- his discharge, nothing --

2 MS. DEMIROK: Nothing --

3 JUDGE WEDEKIND: -- no documents?

4 MS. DEMIROK: -- regarding his discharge, no.

5 JUDGE WEDEKIND: Okay.

6 MR. DAWSON: And, Your Honor, we did look into that.

7 There is no -- currently, they don't give written termination
8 of assistant people. We did -- that one we did look into, and
9 it just doesn't exist.

10 MS. DEMIROK: But I would also suppose there was some
11 communications between Respondent's managers and supervisors
12 regarding his termination. And there has been nothing turned
13 over in that regard as well.

14 MS. OVIEDO: Not even a single email.

15 JUDGE WEDEKIND: Did you look for emails?

16 MR. DAWSON: Yeah. In fact, we'll be putting on a witness
17 who will testify that he didn't -- you know, he
18 compartmentalized this, and it was totally his decision. And
19 he did not email.

20 MS. OVIEDO: No one in HR was notified thereafter?

21 MR. DAWSON: I don't know. Not by email according to what
22 we know.

23 MS. DEMIROK: Well, I'll also note that they gave him a
24 separation agreement when he was discharged, and we didn't
25 receive a copy of that either.

1 MR. DAWSON: We -- I just straightened that out with Ms.
2 Demirok. We didn't have the separation agreement in his
3 personnel file. That's not where it was maintained, for
4 whatever reason. But we've compared, and General Counsel has a
5 copy of the same thing that I have, which is a signed copy that
6 he -- let me step back. A copy that he signed acknowledging
7 that he received it, not that he agreed to it, but that he had
8 received it. We have -- General Counsel is already in
9 possession of what we have on our --

10 JUDGE WEDEKIND: Okay. Counsel says there's no documents.
11 It's up to you to show otherwise.

12 MS. DEMIROK: Okay.

13 JUDGE WEDEKIND: Okay.

14 MS. DEMIROK: Let's see here. We've already -- item
15 number 35 was the separation agreement which we've specifically
16 asked for in 35. But we've just covered that.

17 (Counsel confer)

18 MS. DEMIROK: Item number 36, it does involve Art Manning,
19 but we would, you know, just like to state for the record that
20 not only conversations or emails or text messages that would be
21 in Manning's possession. But if there are any, if he sent any
22 kind of messages or had a conversation with any -- Respondent's
23 other managers or supervisors, we would ask that they take a
24 look for that.

25 JUDGE WEDEKIND: Same as 21?

1 MS. DEMIROK: Yes.

2 JUDGE WEDEKIND: Okay.

3 MS. DEMIROK: Item number 37, that is also in regards to a
4 meeting. This was, again, within that series of meetings. And
5 I would just like to note we did not receive anything for the
6 April 29th meeting.

7 JUDGE WEDEKIND: Any particular reason?

8 MR. DAWSON: That was a meeting. Are we talking about
9 number 38?

10 JUDGE WEDEKIND: 37.

11 MS. DEMIROK: Number 37.

12 MR. DAWSON: Oh, I'm sorry. Okay. I skipped ahead.

13 No, same issue, Your Honor.

14 JUDGE WEDEKIND: Keep looking. Anything else?

15 MS. DEMIROK: Well, there isn't anything responsive to
16 number 38. I would just ask that I know that Mr. Remblance
17 doesn't work for Respondent anymore. But if they have, they
18 could let us know if they have checked their emails of current
19 supervisors and managers regarding that incident. If there is
20 anything documented, we would appreciate it.

21 MR. DAWSON: We'll look, Your Honor. I don't anticipate
22 that there's going to be anything. That was, you know,
23 probably a nine-second interaction. I believe that there's
24 going to be any documents, but we'll certainly -- you know,
25 certainly take a look. And General Counsel is correct. Mr.

1 Remblance is no longer with the company. So we can't ask him,
2 you know, what he did or who he talked to about it. And by the
3 way, he's not returning phone calls. So we have attempted to
4 get ahold of him.

5 JUDGE WEDEKIND: Okay.

6 MS. DEMIROK: Number 39, there were no responsive
7 documents to number 39. I would just ask that they look if
8 they haven't already.

9 JUDGE WEDEKIND: 40, same thing?

10 MS. DEMIROK: 40 would be the same thing.

11 JUDGE WEDEKIND: Okay.

12 MS. DEMIROK: Number 41, the same thing. Number 42, the
13 same thing.

14 JUDGE WEDEKIND: So you got nothing?

15 MS. DEMIROK: Nothing.

16 JUDGE WEDEKIND: Any reason why?

17 MR. DAWSON: We haven't found anything on these, Your
18 Honor. I mean, again, these last couple of allegations were
19 literally, you know, interactions of less than 30 seconds.
20 These are not meetings in the sense of the other documents that
21 we were talking about. So there really isn't anything out
22 there.

23 MS. OVIEDO: Does --

24 MR. DAWSON: Now we will -- we'll look again just to make
25 sure. That's based on, you know, my knowledge of what the

1 allegations are. I'll confirm the search terms that we used to
2 try to narrow down the universe. And I can, you know,
3 certainly report back.

4 MS. OVIEDO: Something, for example, like Mr. Garcia's
5 phone records on -- find a specific date that I could --

6 MS. DEMIROK: May 1st.

7 MS. OVIEDO: May 1st. So a week before, week after, his
8 phone records.

9 MR. DAWSON: Your Honor, if these are his personal phone
10 records, is it General Counsel's position that we have to turn
11 over personal phone records of supervisors?

12 MS. OVIEDO: If they regularly use their personal phones
13 for work purposes, and that's what Respondent expects from its
14 supervisors and managers, then yes.

15 JUDGE WEDEKIND: Is that true? Do they?

16 MR. DAWSON: I don't know the answer to that, Your Honor.

17 JUDGE WEDEKIND: Do you?

18 MS. DEMIROK: As far as I know, a lot of the supervisors
19 are given work phones from --

20 JUDGE WEDEKIND: Okay. So you're asking for the work
21 phone?

22 MS. OVIEDO: In any other regard, if it is his personal
23 phone and not his work phone, it's still under Respondent's
24 control.

25 JUDGE WEDEKIND: So how would they get --

1 MR. DAWSON: I don't believe -- oh, sorry.

2 JUDGE WEDEKIND: How would -- you want to know who he
3 called?

4 MS. OVIEDO: Or received a call from.

5 JUDGE WEDEKIND: It's important? How is that -- is that
6 going to tell you something?

7 MS. OVIEDO: Yes.

8 JUDGE WEDEKIND: That comes under 41? Is that what you're
9 saying? Is this Garcia?

10 MS. OVIEDO: We'll limit it to work phones if he has a
11 work phone.

12 JUDGE WEDEKIND: Mr. Garcia you're talking about?

13 MS. DEMIROK: Mr. Garcia.

14 MS. OVIEDO: Yes.

15 JUDGE WEDEKIND: Okay. So 41, Garcia's work phone records
16 showing who he called or called him.

17 MS. DEMIROK: Or any text messages if they text.

18 JUDGE WEDEKIND: On what dates?

19 MS. OVIEDO: Specifically, May 1st.

20 JUDGE WEDEKIND: On May --

21 MS. DEMIROK: May 1s through I would say May 5th.

22 JUDGE WEDEKIND: May 1 through May 5. Okay.

23 MS. DEMIROK: Items number 43 through 45. There was a
24 meeting with a particular employee between two high level
25 managers. We didn't get any responsive documents to this

1 incident. I would expect that there would be some sort of
2 communication, whether it's hey, why don't you go get employee
3 so and -- you know, Mr. Lerma here and bring him to my office.
4 We didn't get anything. Now if there's nothing, there's
5 nothing. But they should -- I'd like to know if they've taken
6 a look.

7 MS. OVIEDO: Text messages, emails.

8 MR. DAWSON: I believe we have, Your Honor. And again,
9 this falls under the -- I think there's a -- I don't want to
10 say misunderstanding, but I think there's a difference in view
11 of what this -- and it goes to the merits, so I won't get into
12 it. But this was not a disciplinary issue. So it wasn't
13 something that would be documented, because it wasn't
14 disciplinary in nature. I can take a look and see what search
15 terms we've used to find out. And if there is something, you
16 know, we'll turn it over. But this was not an issue of
17 discipline.

18 JUDGE WEDEKIND: Okay. I hear you.

19 MS. OVIEDO: It still would -- regardless of whether it
20 was a disciplinary issue or not, it would still be
21 correspondence potentially between the two --

22 MR. DAWSON: The potential --

23 MS. OVIEDO: -- high level managers.

24 JUDGE WEDEKIND: He's saying potentially -- yeah, he's
25 saying that they didn't find anything. So we'll -- they'll

1 look again.

2 MS. OVIEDO: I find it very odd that no e-mails appear in
3 the responsive documents, so are they saying that they have all
4 oral conversations over there, that no one uses e-mail, no one
5 uses text message in this day and age?

6 JUDGE WEDEKIND: Apparently about this conversation.
7 That's what you're saying?

8 MS. OVIEDO: Or pretty much the rest of the subpoena.

9 JUDGE WEDEKIND: It could be. Just -- you know, you --
10 when you're ready to -- do you want to ask me to do something,
11 let me know, but right now he's saying he'll take another look,
12 and are you satisfied with that?

13 MS. DEMIROK: We'll keep going, Your Honor.

14 JUDGE WEDEKIND: Okay.

15 MS. DEMIROK: So item number 46, it seems like this would
16 be an easy one to produce, but it was not in the documents.
17 It's a copy of a letter from Kent McClelland issued to the
18 employees on about May 8th, 2015.

19 JUDGE WEDEKIND: Does the Company dispute that there was
20 such a letter?

21 MR. DAWSON: No.

22 JUDGE WEDEKIND: You don't dispute it?

23 MR. DAWSON: No.

24 JUDGE WEDEKIND: Okay. I didn't think so. Any reason you
25 didn't turn it over?

1 MR. DAWSON: The prioritizing. I understand that's -- you
2 know, that Your Honor has already dismissed that as a reason,
3 but they quoted the letter, so they certainly have it, and I
4 don't think there's any dispute over the content. You know,
5 that seems like something that --

6 JUDGE WEDEKIND: All right. Let me interrupt you. Here's
7 the deal. That was a simple one, like number one was a simple
8 one, and you didn't produce it. And you said you were
9 prioritizing, and then you say you didn't turn it over, because
10 you think they already have it.

11 You know, that's not always the issue. Sometimes if they
12 get a letter from you pursuant to a subpoena that establishes
13 authentication, identification, the various things are
14 subpoenaed. That kind of thing doesn't reflect well on your
15 good faith overall.

16 So, you know, I just -- I caution you. And I'll use this
17 now to tell you that I expect you to turn over whatever you do
18 discover, whatever you find as you find it, not wait until you
19 found everything and say, well, we're still looking that's why
20 we didn't turn over anything. Turn over what you have, when
21 you have it, and keep looking if you haven't finished looking.

22 MR. DAWSON: Yes, Your Honor.

23 JUDGE WEDEKIND: Okay.

24 MS. DEMIROK: Thank you, Your Honor.

25 JUDGE WEDEKIND: Sure. And turn that one over, first

1 thing.

2 MR. DAWSON: Yes, Your Honor.

3 MS. DEMIROK: Item number 52, we'll just say we didn't get
4 any payroll records whatsoever, unless those records were part
5 of Mr. Wallace's personnel file. And this is relevant as one
6 of the allegations specifically says that employees were
7 granted benefits by -- when they were given a pay -- like a
8 wage increase.

9 MR. DAWSON: Your Honor, we can -- you know, we can
10 certainly pull -- you know, as we're going through these,
11 especially now having the hindsight of prepping some of the
12 witnesses, it seems like a lot of these we could, you know,
13 probably just stipulate to and not have -- I don't think
14 there's a question that there was a pay raise granted on a
15 particular date, and I don't think we should have any issue
16 stipulating to the amount of it.

17 Now, like I said, if we need to go through payroll
18 records, you know, I still think that that's -- turning those
19 over en masse for, you know, five hundred and some warehouse
20 employees is, I think, a little -- I'm a little uncomfortable
21 with that, but, nonetheless, you know, if Your Honor tells us
22 we have to do it, that's the case. But, again, I don't -- you
23 know, I don't believe that there's really a dispute over this
24 item.

25 I understand that that doesn't mean that the subpoena is

1 invalid, I get that, but, you know, it seems like some of these
2 things are -- we could simplify this a lot and cut down the
3 paper if we could reach stipulations.

4 JUDGE WEDEKIND: Well --

5 MS. DEMIROK: We would --

6 JUDGE WEDEKIND: -- the time to reach stipulations was a
7 couple days ago at a minimum and that's another reason why.
8 And I assumed they computerize their payroll records. Do they
9 or don't they? Do you computerize your payroll records? Of
10 course you do. So all you had to do was press a button, I
11 would think to print it out. Did they produce 53?

12 MS. OVIEDO: No, Your Honor.

13 MS. DEMIROK: No.

14 JUDGE WEDEKIND: Okay. I think -- didn't the subpoena say
15 that you were willing to reach stipulations in lieu of
16 production?

17 MS. OVIEDO: Yes, Your Honor.

18 MR. DAWSON: It said that in regard to the supervisory
19 status.

20 JUDGE WEDEKIND: Oh, okay. Well, just like everything,
21 that's always true. So what would you like? What do you want
22 to do? Do you want to wait until tomorrow morning to get them?

23 MS. DEMIROK: Yeah, I would like to wait on this one --

24 JUDGE WEDEKIND: Okay.

25 MS. DEMIROK: -- and then ask what to do about this

1 particular issue.

2 JUDGE WEDEKIND: Get it to us tomorrow morning, first
3 thing tomorrow morning.

4 MS. INESTA: And you're asking for?

5 JUDGE WEDEKIND: 52 and 53.

6 MR. DAWSON: The payroll records?

7 JUDGE WEDEKIND: Yeah, identity of employees, the payroll
8 records.

9 MS. DEMIROK: I guess -- I suppose that would also be for
10 54.

11 MS. OVIEDO: 54.

12 JUDGE WEDEKIND: 54. There was no -- there wasn't even a
13 petition to revoke 54, was there?

14 MS. DEMIROK: No, not that I remember.

15 MR. DAWSON: Your Honor, you know, again, understanding
16 that you've ruled on the objection, as I understand it, the
17 items separately enumerated in 53 are not maintained
18 collectively, and we may need to -- I mean that would require
19 us --particularly job classifications and changes, and so forth
20 -- you know, we may have to go through five hundred and some
21 personnel files to pull that out, and they're paper, they're
22 not electronic, so.

23 JUDGE WEDEKIND: Well, what you need to do is you need to
24 talk to the General Counsel, and tell them the problem, and
25 work it out. And if that's a problem, there is ways to go

1 about it. Invite them to your office to look at our -- to look
2 at the files. I mean there are various things you could do.
3 General Counsel may not like that option, but, in any event,
4 there are various ways to look at it. And that's what you need
5 to do.

6 You know, you're in an office, you've been around, you
7 know how this works. This hearing started yesterday and the
8 documents were supposed to be turned over yesterday. And if
9 you didn't turn something over and your reason for not turning
10 it over was that you're prepared to stipulate to a particular
11 fact that should have been disclosed yesterday before they
12 searched and searched the files for documents that weren't
13 there.

14 This is not the way to proceed, and it's not reflecting
15 well on your client who can suffer greatly, greatly with the
16 failure to produce documents, adverse inferences, lots and lots
17 of problems. So I would suggest that you produce them the
18 first thing tomorrow morning, otherwise the General Counsel is
19 going to have to look for --

20 MS. OVIEDO: Seek further sanctions.

21 JUDGE WEDEKIND: -- look for further sanctions or
22 whatever.

23 MS. DEMIROK: We haven't gone through the whole subpoena
24 yet, but there are several other ones that haven't been --

25 JUDGE WEDEKIND: Sure.

1 MS. DEMIROK: -- okay. So number 55, this was related to
2 any kind of photographs, notes, or video recordings as would
3 show Union activity. There are some surveillance allegations
4 and also some impression of surveillance allegations. So if
5 there are any responsive items, we would appreciate to either
6 know that they've looked or that -- or have that produced what
7 is there.

8 MR. DAWSON: We have no responsive documents to 55, Your
9 Honor.

10 MS. OVIEDO: So are they saying that they don't have a
11 single e-mail containing the word Union in it?

12 MR. DAWSON: This says video recordings, audio recordings,
13 photographs, notes, logs, and all other documents.

14 MS. OVIEDO: All other documents, which is defined as e-
15 mails. And if you look at the definition page --

16 MR. DAWSON: Showing activities related to the Union or
17 Unions, generally. You know, I believe, Your Honor, that
18 doesn't mean if the word Union appears that we're obligated to
19 turn that over. That's not the way I read the request.

20 JUDGE WEDEKIND: Well, that's a good search term.

21 MR. DAWSON: If it is --

22 JUDGE WEDEKIND: I would definitely use that as a search
23 term.

24 MS. OVIEDO: Yep.

25 MR. DAWSON: -- it is a good search term, but --

1 JUDGE WEDEKIND: Did you use it?

2 MR. DAWSON: -- but it doesn't -- yes, we did.

3 JUDGE WEDEKIND: Did you do it? Okay.

4 MR. DAWSON: And it doesn't narrow the --

5 JUDGE WEDEKIND: Nothing came up.

6 MR. DAWSON: -- oh, no, no. It doesn't narrow the

7 universe down, but we don't have certainly not video

8 recordings, audio records, or photographs.

9 JUDGE WEDEKIND: Well, what about e-mails? And what --
10 how are you looking to narrow the universe down?

11 MR. DAWSON: Well, by the term Union, and then by the 15
12 supervisors, but, you know, we're still -- there's -- Union
13 shows up. I mean we also used the search term bakery for
14 bakery and confectionary. And, unfortunately, because it's a
15 food service warehouse, bakery --

16 JUDGE WEDEKIND: Yeah, sur.

17 MR. DAWSON: -- returns a lot of hits.

18 JUDGE WEDEKIND: So how many e-mails came up with the word
19 Union?

20 MR. DAWSON: I believe -- oh, just with the word Union or
21 bakery?

22 JUDGE WEDEKIND: Yeah.

23 MR. DAWSON: I don't know the answer to that. That I can
24 check.

25 JUDGE WEDEKIND: More than 100?

1 MR. DAWSON: Yes.

2 MS. OVIEDO: We would still like to see them.

3 JUDGE WEDEKIND: Well, you have to have a reason not to
4 turn them over. I'm not sure what that reason was. It's
5 something that didn't deal with the 15 individuals. It's not
6 limited to the 15 individuals; is it?

7 MS. OVIEDO: No, it's not, Your Honor.

8 JUDGE WEDEKIND: Yeah, I'm not sure where that came from.
9 Again, I'm concerned that the Company is self-limiting the
10 subpoena requests without a --

11 MS. DEMIROK: And I would also like to add --

12 JUDGE WEDEKIND: -- without a basis.

13 MS. DEMIROK: -- if they think that these are privileged
14 in any way, they should provide a privilege log. I mean, I
15 don't know if that's the reason why they haven't turned them
16 over, but I don't know what other reason --

17 JUDGE WEDEKIND: I haven't heard that mentioned yet.
18 Okay.

19 MS. DEMIROK: -- what other reason they would have, so.

20 JUDGE WEDEKIND: Well, and I covered that in my order, so
21 they know what they had to do.

22 MS. DEMIROK: Item number 57. Also, it would be a pretty
23 easy one to turn over, would be the personnel file for Mario
24 Lerma. He's a discriminatee named in this case. We did not
25 receive any documents responsive to item number 57.

1 MR. DAWSON: Lerma, that should be -- I'm a little
2 surprised that General Counsel doesn't have access to that,
3 because I remember looking at that particular -- so that -- if
4 that hasn't been produced, you know, it certainly not because
5 we're withholding it.

6 MS. DEMIROK: It isn't contained in these numbers, 000001
7 through 003213. And as of yesterday, those were the bates
8 numbers of the documents that we were given. So if there's
9 anything after 003213, then, again, please provide those hard
10 copy.

11 Items number 58 through 61, 62, actually and 63, these all
12 also relate to the incident involving Mario Lerma.

13 JUDGE WEDEKIND: You're saying you got nothing?

14 MS. DEMIROK: Nothing.

15 JUDGE WEDEKIND: Okay. Can you explain that?

16 MR. DAWSON: Your Honor, I may have misspoke. Yeah, this
17 is -- I'm sorry, this is the -- this is the issue that was not
18 disciplinary in nature and there wasn't any further action
19 items coming out of it. Yes, we did take a look. I can't say
20 that we've looked at every e-mail that may involve this, but
21 this was not a -- this wasn't disciplinary in nature.

22 MS. DEMIROK: That's the dispute that's at issue in this
23 case.

24 MR. DAWSON: Well --

25 JUDGE WEDEKIND: I mean you mentioned that yesterday, your

1 position is it wasn't a

2 MR. DAWSON: Yeah.

3 JUDGE WEDEKIND: -- disciplinary action. So your response
4 to me today is that you didn't find anything, because that's --
5 is that your reason>?

6 MR. DAWSON: Because there's some -- yeah, whether or not
7 it's disciplinary, I understand that's a merits issue.

8 JUDGE WEDEKIND: You didn't find anything?

9 MR. DAWSON: That's a merits issue, but it's not
10 surprising that this wouldn't be documented.

11 JUDGE WEDEKIND: Okay.

12 MR. DAWSON: And I think even General Counsel has asked
13 for, to the extent that makes sense, removal of a verbal
14 warning. It's verbal. You know, they asked for removal of a
15 verbal warning from the file. I think they acknowledge that to
16 the extent anything exists, it was verbal. You know, and so
17 it's just an issue of did we write down a verbal warning. I --
18 you know, I don't think you can --

19 MS. DEMIROK: Well, it's more expansive than that. If I
20 -- I mean these are specific requests for anything -- like,
21 basically, anything that's related to that incident.

22 JUDGE WEDEKIND: And he's saying there isn't anything.
23 And you and I have both see many written verbal warnings.

24 MR. DAWSON: Yeah.

25 JUDGE WEDEKIND: So --

1 MR. DAWSON: Understood.

2 JUDGE WEDEKIND: -- that's not unusual. But, in any
3 event, you know, you're representing that you weren't able to
4 find anything. Let's --

5 MS. OVIEDO: I don't think it's a representation. I think
6 he said that they didn't look through e-mails. They haven't
7 looked through the e-mails for --

8 MR. DAWSON: I said we have not found anything. We have
9 looked through e-mails. We have not found anything, but we
10 will certainly, you know, take another spin.

11 JUDGE WEDEKIND: Okay.

12 MS. DEMIROK: And also number 64, which is a bit more
13 broad, but it's any communications between Respondent's
14 managers or supervisors referencing Lerma since January 1st,
15 2015, along with number 65, which is related. And we didn't
16 receive anything in responsive to either one of those.

17 JUDGE WEDEKIND: Any -- the same answer?

18 MR. DAWSON: Yes, Your Honor.

19 JUDGE WEDEKIND: Okay. I mean I assume there are some
20 that are probably attorney-client.

21 MR. DAWSON: I will -- yeah, I believe there are.

22 JUDGE WEDEKIND: Yeah, okay, but other than that -- okay.

23 MS. DEMIROK: And of course rule number 66, we didn't get
24 either. So if there are responsive documents, we would ask
25 that they be produced as soon as possible.

1 JUDGE WEDEKIND: How about 66, any response to that?

2 MR. DAWSON: There's nothing. We don't have anybody
3 that's in discipline for heckling.

4 MS. OVIEDA: Or investigated.

5 JUDGE WEDEKIND: Yeah, I want to go back to these again.
6 I mean the bottom is we've gone through now the entire
7 subpoena, numerous, numerous, numerous paragraphs where the
8 Company has acknowledged that they -- you didn't look for
9 certain things or didn't disclose them, didn't think it was
10 necessary, et cetera, et cetera.

11 I issued sanctions on the first one and now I'm second
12 guessing that, because if you're willing to wait until tomorrow
13 on --

14 MS. DEMIROK: Well --

15 JUDGE WEDEKIND: -- everything else, why shouldn't you
16 wait until tomorrow on number one and number two?

17 MS. DEMIROK: -- Your Honor, if I may. When I said I
18 would wait until later to ask, I really should ask for a moment
19 of time to either confer with the Region or with my co-counsel
20 to decide, because really their disregard for the subpoena is
21 so expansive that I mean, at this point, I need to figure out
22 what would be appropriate to ask for in the first place.

23 JUDGE WEDEKIND: I think that's a good idea, and I think
24 it's also important that you consider that we're in the Ninth
25 Circuit given the scope of the problems with the subpoena and

1 what you -- the ultimate outcome of this case. I think it's a
2 problem on whether or not those sanctions can be enforced in
3 the Ninth Circuit. They've never got that far, so.

4 MS. DEMIROK: We will look into that, but I mean with the
5 review of the NRLB Bench Book, it seemed like all of those
6 sanctions would be within your discretion.

7 JUDGE WEDEKIND: Well, they certainly are under Board law.

8 MS. OVIEDA: And, Your Honor, it's my understanding in the
9 Ninth Circuit the sanctions are permissible and enforceable.
10 It's the adverse inferences that tend to be a bigger issue in
11 the Ninth Circuit, but.

12 JUDGE WEDEKIND: Okay. That -- it's your decision to
13 make. That's fine, and it's not my decision. I'll follow
14 Board law. I'm perfectly willing to follow Board law and issue
15 sanctions if they're appropriate, but I'm concerned that, you
16 know, why pick out number one through seven for sanctions when
17 we have, I think, similar problems with at least some of the
18 other ones. I think if your superiors decide, okay, we're
19 willing to wait until tomorrow morning to get everything that
20 we asked for, why shouldn't one through seven be in there too,
21 okay, at this point?

22 MS. DEMIROK: I --

23 JUDGE WEDEKIND: Given the fact that it's -- is it after
24 3:00 or it's after 2:00.

25 UNIDENTIFIED SPEAKER: 2.

1 JUDGE WEDEKIND: We're not going to get very far today,
2 apparently.

3 MR. CROWLEY: Well, Your Honor, it appears to me that the
4 tenor of the discussion of responsive to documents from the
5 Company changed significantly after you granted some sanctions
6 45 minutes ago. So I think you're now to say you're going to
7 reason those is --

8 JUDGE WEDEKIND: Well --

9 MR. CROWLEY: -- is not a good move, considering they said
10 they're going to maybe produce documents tomorrow, but I
11 wouldn't, you know, take that away, take that stick away at
12 this point. You know --

13 JUDGE WEDEKIND: -- well, it's a stick that's still on the
14 table.

15 MR. CROWLEY: -- it seems like --

16 JUDGE WEDEKIND: It's not going anywhere, really.

17 MR. CROWLEY: -- yeah, but I -- I just don't want to mess
18 with --

19 JUDGE WEDEKIND: I mean it's not that anything --

20 MR. CROWLEY: -- okay.

21 JUDGE WEDEKIND: -- is going to change tomorrow if they
22 don't produce them.

23 MR. DAWSON: If I may respond, Your Honor.

24 JUDGE WEDEKIND: Yeah.

25 MR. CROWLEY: I clearly understand that the stick is on

1 the table.

2 JUDGE WEDEKIND: Right. Right.

3 MR. DAWSON: We understand that.

4 JUDGE WEDEKIND: Okay. I don't want to go back and change
5 my ruling. I didn't want to do this, but I didn't expect to
6 this degree, apparently, we have not gotten documents that were
7 subpoenaed. And it just seems to me -- you know, I started
8 with one through seven, because that's where we started, and
9 then it turns out you have similar problems with a lot of other
10 things, and you're not asking for sanctions right now.

11 MS. DEMIROK: Well, I --

12 JUDGE WEDEKIND: So I suggest you do take a moment --

13 MS. DEMIROK: -- no, I --

14 JUDGE WEDEKIND: -- and decide what you what you want to
15 do.

16 MS. DEMIROK: -- I'm sorry, Your Honor.

17 JUDGE WEDEKIND: Okay.

18 MS. DEMIROK: I agree and, at this point, I mean going
19 through the entire document there may be just even more that we
20 need to ask for at this point.

21 JUDGE WEDEKIND: More than what's in the subpoena?

22 MS. DEMIROK: No, more than the sanctions --

23 JUDGE WEDEKIND: Oh, okay.

24 MS. DEMIROK: -- that you've already ruled on.

25 JUDGE WEDEKIND: Okay. So how much time you want?

1 MS. DEMIROK: If you could give us 20 minutes?

2 JUDGE WEDEKIND: Okay. And are you basically done with
3 the subpoena issue?

4 MS. DEMIROK: Yes.

5 JUDGE WEDEKIND: Okay. Anything else? Would you have any
6 other preliminary matters?

7 MS. DEMIROK: Yes, we just wanted a stipulation with
8 regard to the authenticity of Respondent's position statements.
9 We have two. We'll give them an opportunity to review them,
10 and then --

11 JUDGE WEDEKIND: Okay.

12 MS. DEMIROK: -- when we go back on the record, perhaps we
13 can make that stipulation.

14 JUDGE WEDEKIND: Okay. All right. All right. Let's take
15 15, 20?

16 MS. DEMIROK: Twenty minutes, Your Honor.

17 JUDGE WEDEKIND: Twenty minutes, and back at 20 till.

18 MS. DEMIROK: Thank you.

19 JUDGE WEDEKIND: Sure. Off.

20 (Off the record at 2:18 p.m.)

21 JUDGE WEDEKIND: Okay. Let's go back on the record.

22 Okay. General Counsel, what's your position?

23 MS. DEMIROK: So General Counsel's position is that we're
24 going to seek sanctions in regard to the -- just the expansive
25 of their -- the disregard for the subpoena.

1 Again, I would restate the sanctions that we requested in
2 the beginning regarding the first few items and that we be able
3 to provide secondary evidence that they will not be able to
4 cross-examine on those issues and that they won't be able to
5 provide any of their own -- any of their own direct evidence on
6 those issues.

7 Regarding the rest of the subpoena, we are seeking
8 sanctions in that if they produce any documents or try to
9 introduce any documents during their case-in-chief, we will
10 object and if we fail to object on one, we would like to have a
11 standing objection that anything that they produce that could
12 be responsive to the subpoena, that the introduction of that
13 document be denied. And if it comes out in the testimony that
14 there are responsive documents that we did not receive today,
15 we would like adverse inferences drawn.

16 In addition, there are certain issues such as disparate
17 treatment that may come up in this case, and if we are unable
18 to show, based on the failure to produce the documents that
19 would be responsive to showing disparate treatment that we
20 haven't received today, we would request that they, in
21 addition, will not be able to introduce any kind of evidence to
22 show that there was no disparate treatment.

23 And, of course, we would request any other sanctions that
24 you would feel are appropriate at this time, but we will state
25 that we would like the documents, we would like them as soon as

1 possible, and it's our position that they should have been
2 produced at the time on the subpoena.

3 JUDGE WEDEKIND: Okay. Is that it?

4 MS. DEMIROK: That's it.

5 JUDGE WEDEKIND: Okay. I just to clarify a few things.
6 So one through seven, basically -- paragraphs one through
7 seven, you basically want what I already ruled --

8 MS. DEMIROK: That's correct.

9 JUDGE WEDEKIND: -- that I would grant. Okay. So as to
10 everything else, you're saying you're just going to wait to see
11 what they introduce and if they introduce something that wasn't
12 provided, then it should be barred?

13 MS. DEMIROK: Well, if you can make a ruling right now
14 that they won't be able to introduce any documents that would
15 be responsive to the subpoena I would like that ruling, but I
16 would reserve the right to object to any documents at that
17 time.

18 JUDGE WEDEKIND: You're going to have to identify them. I
19 mean I'm not going to identify them. You would have to
20 identify them, and I think it may -- if testimony -- if there's
21 testimony that comes out that there was an e-mail, et cetera,
22 you would want an adverse inference that the failure to produce
23 that e-mail earlier would have supported the General Counsel's
24 case.

25 MS. DEMIROK: That's correct.

1 JUDGE WEDEKIND: And as to disparate treatment, what are
2 you asking for again? The Company -- what are you asking for
3 with respect to disparate treatment that isn't already covered
4 by everything we already talked about?

5 MS. DEMIROK: There is an overlap there, but I just wanted
6 to be very clear that if they tried to produce evidence showing
7 that they treated these discriminatees just as they have any
8 other employee in the past, that any type of evidence that
9 comes in on that issue be precluded.

10 JUDGE WEDEKIND: And that's because they didn't produce
11 what?

12 MS. DEMIROK: Well, there are quite a number of items, and
13 we could go through that if you would like.

14 JUDGE WEDEKIND: Well, that may be kind of -- okay. So
15 you don't have to go back over each one, but -- but then you
16 say, well, we still want the documents.

17 So let's say the Company produces another 500 documents
18 tomorrow morning that are responsive to one through seven and
19 others, then what?

20 MS. DEMIROK: I would say in that event, if we have
21 already questioned the witness that those documents may have
22 been introduced with, I would like to reserve the right to
23 recall that witness to introduce those documents. And also, we
24 -- you know, we should be able to produce those documents
25 regardless of when they're produced to us.

1 And I suppose I would also request that they can't cross-
2 examine the witness regarding those particular documents if we
3 get any in at a later time. You know --

4 JUDGE WEDEKIND: This is a problem, because I've had this
5 before. So let's say they fully comply tomorrow, fully comply,
6 tomorrow morning at 9:00. You want to take those documents,
7 and you still want all the adverse inferences? So you'll still
8 -- you'll introduce everything, you still want everything else.
9 They can't rebut, they can't produce any evidence, they
10 can't --

11 MS. DEMIROK: Well --

12 JUDGE WEDEKIND: -- so why should they produce anything
13 tomorrow?

14 MS. DEMIROK: -- the General Counsel's position is that
15 we've been severely prejudiced by their failure to comply, but
16 in the interest --

17 JUDGE WEDEKIND: I mean you don't have to explain it to
18 me; I just want to know what you want.

19 MS. DEMIROK: -- yeah, and in the interest of time we're
20 going to move forward. And if they want to produce the
21 documents, they can do that, and we are requesting that they
22 still comply with the subpoena --

23 JUDGE WEDEKIND: Well, what do they get for that?

24 MS. DEMIROK: -- but --

25 JUDGE WEDEKIND: Do they get anything for that? Why

1 should they comply now? But I guess --

2 MS. OVIEDA: Why should they get anything?

3 JUDGE WEDEKIND: -- I'm not --

4 MS. OVIEDA: They're the ones that are breaking the rules.

5 JUDGE WEDEKIND: -- so if they fully comply tomorrow, you
6 still want everything you already asked for.

7 MS. DEMIROK: We will not be asking for any time to review
8 the documents once they comply. We will move forward --

9 JUDGE WEDEKIND: You're just going to move forward.

10 MS. DEMIROK: -- in the interest of time.

11 JUDGE WEDEKIND: All right. Okay. Any response?

12 MS. INESTA: Yes, Your Honor. We do respectfully request
13 that we at least be allowed, at this time to place our concerns
14 and objections to such sanctions on the record.

15 I mean, first of all, we want to reassert that this have
16 not been an issue of bad faith, but an issue of timing that has
17 a good faith, and diligently, and repeatedly brought to the
18 attention, you know, of the Region several times, including in
19 the petition to revoke when we clearly expressed our concerns
20 that we were not going to have a sufficient amount of time to
21 address the breadth and scope of the subpoena.

22 We also brought it through Respondent's renewed request
23 for continuance, which, unfortunately, and through no fault of
24 our own, you know, resulted in a loss of two days when the
25 facility and the people that we were dealing with lost power

1 due to the storm.

2 And in total, if you look at when the subpoena was served,
3 we were technically left with seven business days to identify,
4 locate, search for, review, label, and prepare for production
5 an enormous number of documents, given the scope of the
6 subpoena.

7 In fact, our attempt to use the FTP site was in a good
8 faith effort to respond to the difficulties that we were having
9 and how long is it going to take to even review and produce
10 these things in a way that was most efficient. And I know that
11 we had some blips with the FTP site, but the thought behind it
12 was really to allow us to upload it into some -- you know, some
13 area where, as they ask, multiple people could enter the FTP
14 site and review and download whatever documents they want.

15 Now, we've now learned that what they did was try to
16 download the entire, you know, grouping of documents, but even
17 in terms of them having access to those documents and the
18 ability to review those documents, we really tried to comply
19 with their request that they be placed on the system, that
20 multiple people have access to them and be able to review them.

21 And while acknowledging that it takes time to upload, and
22 transfer, and download documents, Respondent has not been
23 afforded the same consideration of the time it takes to run
24 even these searches when it's searching, you know, hundreds of
25 -- you know, a hundred thousand e-mails in the Company for a

1 period of time that went back 16 months, that in one situation
2 took almost 48 hours just to run the search of all the e-mails,
3 not to mention the number of e-mails that end up coming up,
4 because no matter how much you narrow search terms, it brings
5 up a lot of unresponsive documents.

6 In the end, we ended up producing 3500 documents, which I
7 think also shows our good faith, which were reviewed, which
8 were looked at, which were located. At the end of the day,
9 given the limited amount of time, while access to electronic
10 discovery, you know, does expand the documents you could
11 potentially locate, it also requires a reasonable amount of
12 time, which has not been afforded in this case.

13 And under these circumstances, as we stated yesterday, we
14 were left with almost no other choice, but a rolling production
15 where we said we are going to and have continue to look for
16 documents, and will produce them as soon as we can.

17 JUDGE WEDEKIND: Is that correct, 3500 documents were
18 produced?

19 MS. OVIEDA: The majority, which were unresponsive.

20 JUDGE WEDEKIND: Okay. And tell me a little bit more
21 about those documents. Why are they unresponsive?

22 MS. DEMIROK: There are 218 files, and I believe over 40
23 of those files contain -- I think they're labeled as something
24 like behavior observation surveys.

25 So I can see how those may be responsive, as far as some

1 of the supervisory issues that were at issue at one time, but
2 many of those observation reports were done by supervisors who
3 were not even named in the complaint and who are not at issue
4 in this case.

5 So there are hundreds of pages of documents that are
6 completely unresponsive, because they just detail what
7 supervisors that we've never even heard of in this case, their
8 observations of certain employees regarding safety, and --

9 JUDGE WEDEKIND: But are they unresponsive or they're just
10 not helpful?

11 MS. DEMIROK: No, I would say they're unresponsive,
12 because they don't relate to any of the named supervisors in
13 which we directed the subpoenaed documents.

14 MR. DAWSON: May I respond to that --

15 JUDGE WEDEKIND: Sure, why don't --

16 MR. DAWSON: -- just briefly?

17 JUDGE WEDEKIND: -- you respond to that.

18 MR. DAWSON: Two things actually. The BLI reports are in
19 paper form, so the search for the particular supervisors would
20 have added further delay, but on top of that, you know,
21 typically, a classification either has 211 status or it
22 doesn't. So, yes, to the extent that they were not limited to
23 the individuals who were identified, specifically in the
24 complaint is to 11 supervisors. It certainly showed the amount
25 of authority that people in a supervisory position had.

1 And so, our position is they are responsive in the sense
2 that this is something that someone in a supervisory job
3 classification does even if it's documents that are, you know,
4 not necessarily somebody that they've alleged as a 211
5 supervisor, it's still relevant. They are in the same job
6 classification and the same employer.

7 And, in part, it's true we reached a stipulation yesterday
8 on that issue, but, in part, it was because as I was reviewing
9 those documents over the weekend, you know, we came to the
10 conclusion that we really didn't have a strong argument against
11 supervisory status for those individuals.

12 So, you know, again, you're -- when you cast a light in
13 that, you get things that maybe you get things that maybe you
14 don't really need, but nonetheless, it was a wide net, so we
15 felt that those were responsive.

16 MS. INESTA: And, Your Honor, the documents also show that
17 the individuals we allege that do not have supervisory status
18 were not part of those that were disciplined. And I think that
19 to the extent that that's an argument that they want to make,
20 that they want to see the documents to prove that they weren't
21 involved in the disciplinary process, I think those documents
22 also show that.

23 MS. OVIEDA: That's not what the subpoena requested. That
24 -- you can put that in your case-in-chief, but that's not what
25 the subpoena requested.

1 MR. DAWSON: Well --

2 JUDGE WEDEKIND: Well, that's the most important part,
3 what is requested. What about the rest?

4 MS. DEMIROK: Well, Your Honor, if I may address another
5 issue that they brought up was that, you know, they made it
6 seem as though, you know, we were aware that things were going
7 to come on a rolling basis, but I'd like to point out that, you
8 know, we were under the assumption that the majority of the
9 documents that were requested were produced and that there may
10 be some -- you know, a few here and there that they're still
11 looking through to make sure to see if they're responsive, and
12 this was before we had an opportunity to look at the documents.

13 But, come to find out, I mean as we went through earlier,
14 there are a huge range of items that have just been completely
15 not responded to, and we never received any communication from
16 Respondent regarding, oh, by the way, there are 30 items here
17 that we haven't responded to and there was no communication on
18 their part.

19 So they left it up to us to go through and figure out
20 which ones had and hadn't been responded to, and it was quite
21 clear that many of them were not responded to.

22 JUDGE WEDEKIND: I would agree with that, by the way. I
23 was clearly left with the impression that you just had a few
24 items that you were still looking for, nothing like this that
25 we went through today.

1 MR. DAWSON: Your Honor, if --

2 JUDGE WEDEKIND: Yeah.

3 MR. DAWSON: -- if I can respond. I think, you know, just
4 to sort of, you know, hopefully get to a final position, our --
5 I think as Your Honor alluded to, if General Counsel is still
6 going to seek sanctions regardless of what we do tomorrow, our
7 inclination is to spend time with our witnesses tonight.

8 If there's going to be some accommodation, then, you know,
9 we're more than happy to sit with General Counsel for the next
10 hour or so, go through and see if we can reach any -- like, for
11 example, on the payroll dates or, I'm sorry, the pay history,
12 they refer to it as payroll information, but that's not the way
13 we store it. Pay history is on it sort of as payroll. They're
14 stored in paper in 570 or so personnel files.

15 If we can reach some adjustment on that and General
16 Counsel will agree that they will not seek sanctions tomorrow,
17 we're more than happy to do that. We're more than happy to
18 take the time that it takes to go through that tonight and
19 produce them tomorrow morning.

20 If there still is going to be a motion for sanctions, as
21 I'm sure you can understand, you know, we're going to take that
22 time to prep our case and, you know, if the request is going to
23 be that regardless of what we do there's not much reason for us
24 to take time away from what's already been a limited time to
25 prepare, in addition to getting ready for the Section 10J

1 hearing.

2 JUDGE WEDEKIND: Anything else?

3 MS. DEMIROK: Well, I would just point out that their
4 position -- and maybe I'm seeking some clarification, but as I
5 understood Respondent's counsel to explain their position, is
6 that instead of complying with the subpoena, even if you order
7 them to still -- and have ordered them to comply with the
8 subpoena that, you know, if there are sanctions that they won't
9 do so. So, I guess, I'm just seeking clarification, because it
10 seemed like a non-position.

11 MR. DAWSON: That's not my position. If General Counsel
12 wants to go into Federal Court and get the subpoena enforced,
13 then we'll have no choice, but if we're already going to be
14 facing an adverse inference anyway, you know, is it going to be
15 an adverser (sic) inference.

16 I mean it just -- there's not a lot of -- you know, if
17 we're already getting the stick that there's really not much
18 reason for us to take time away from the limited time that we
19 have already, in addition to the, you know, roughly thousand
20 pages of 10J filings that we have to respond to in the next, I
21 don't know, week to two weeks. That's our position.

22 I mean we -- you know, as I said everything that has two
23 eyeballs. So there's so much that we can do, and we have to
24 dedicate limited resources where we think they're going to
25 help. If its' not going to help, and it's not going to

1 advance, then, you know, it doesn't really seem to be a good
2 investment of time that we would be able to spend elsewhere.

3 JUDGE WEDEKIND: Okay. I'm ready to rule. It's a bit of
4 a tough one, but as I mentioned earlier I have to follow the
5 Board law and there's a couple of things going on here that
6 really concern me, but I'll start with the Board law.

7 First of all, I cited it in my order McAllister Brothers.
8 It makes quite clear that two weeks is abundant time before a
9 hearing to respond to a subpoena. Now, people can argue about
10 that, but that's what the Board said. And the subpoena was
11 just as broad in that case as it was in this case. I think
12 there were at least 60 paragraphs in that subpoena. That's
13 what the Board said.

14 The Board also said in McAllister Bros, that you have an
15 obligation to produce the documents on the first day of trial
16 and that's your obligation.

17 Now, of course, there are cases where sometimes it takes a
18 little longer, and you have to look. I've had those cases, and
19 what happens is the company comes in, and they said, Your Honor
20 -- they say, Your Honor, we're looking. You know, we have to
21 go through so many files. This is what we have so far, but
22 we're still looking. That's not would happen -- that's not
23 what happened in this case.

24 And the background is also very concerning to me. Your
25 answer denied that every single individual named in the

1 complaint was not a supervisor or agent, even the President and
2 the CEO of the Company.

3 Now, I'm not sure what evidence you had to look at to
4 discover, on the first day of hearing that he was -- Mr.
5 McClelland, the present CEO, is a supervisor. And I'm not sure
6 what evidence you had to look at to wait until the first day of
7 hearing to do that, but you didn't tell anybody apparently
8 until the first day of hearing.

9 And so, the General Counsel had to prepare to put on
10 evidence to prove that. That doesn't reflect well on the
11 Company in this case, I have to say. And I gave you the
12 benefit of the doubt.

13 And then you admit later today that you in fact found lots
14 of documents that were responsive to the subpoena, but you
15 didn't turn them over for some reason. You say you didn't turn
16 them over, because you were still looking. That's not an
17 excuse to turn over what you've already found. Hundreds of e-
18 mails you found, you didn't turn them over.

19 You didn't tell the General Counsel or me, specifically,
20 what you did not turn over. You just said here's the file, and
21 we have -- you know, we're still looking for a few things.
22 That was clearly my impression that there was substantial
23 compliance with the subpoena and because of the holiday, and
24 various problems, and just the number of subpoena requests you
25 were still looking. You know, that's completely

1 understandable.

2 If you had said that, we wouldn't be -- I don't think we
3 would be here today, over where we are, if you had simply been
4 forthcoming in explaining what the problem was, but you didn't
5 do that. You didn't do that. You didn't communicate to me or
6 to the General Counsel what was actually going on. I've never
7 seen anything like it, never seen anything like it. I haven't
8 been doing it that long, but I've been doing it for five, six
9 years. I've never seen anything like it.

10 So I'm going to grant the sanctions. Everything the
11 General Counsel asked for. And, unfortunately, I think it's
12 going to make it complicated, but that's the way it is. As we
13 go through, you know, we'll have to -- if the General Counsel
14 wants to make objections to particular documents based on the
15 sanctions, we'll handle them as we go along.

16 Adverse inferences, I think we'll just wait until it's all
17 over. As I said, I think you can argue that in your briefs,
18 but as for everything else, secondary evidence, no cross-
19 examination and no direct evidence. And, you know, there are
20 so many issues in this case, it's difficult -- I can't tell you
21 exactly what's covered at this point. I don't know if the
22 General Counsel can. We're going to have to take it as it
23 goes.

24 And because of how complicated it is, I think that I'm
25 inclined to grant the General Counsel's request that -- if they

1 don't make the objection -- there's a standing objection, and
2 if they don't make it in the heat of the trial, and then they
3 go back later, and they see, oh, wait a minute that was a
4 responsive document, I'm going to allow them to argue in their
5 brief that it should have been barred. That's what you wanted,
6 right?

7 MS. DEMIROK: That's correct.

8 JUDGE WEDEKIND: Okay. I think that's fair given the
9 breadth of the subpoena and what's missing. And as a general
10 matter, if testimony reveals that there are documents contrary
11 to the representations made by Respondent's counsel today; I
12 think that would support an adverse inference, but I still want
13 to see their argument for it in the brief.

14 Okay. I'm not going to rule on that ahead of time. And,
15 certainly, it would help if you highlighted if that comes out
16 either during the hearing or in the brief --

17 MS. DEMIROK: Okay.

18 JUDGE WEDEKIND: -- exactly what you're referring to.

19 On the disparate treatment, if that's the Respondent's
20 whole defense, right, I mean that's basically what the company,
21 the Respondent's argued. That's their burden, right? I mean
22 once the General Counsel has set aside --

23 MR. DAWSON: Under the bright line --

24 JUDGE WEDEKIND: Yeah, the bright line.

25 MR. DAWSON: Well, I think it's probably disputable

1 whether -- I mean you have to show obviously Union activity.

2 You have to show Employer knowledge.

3 JUDGE WEDEKIND: Well, they would have done that anyway.

4 MR. DAWSON: But right, I mean, yeah, that we would have
5 done it in the absence of --

6 JUDGE WEDEKIND: And that's relevant to which issue?

7 That's the discharge issue only or others as well?

8 MS. DEMIROK: The discharge and the discipline as well.
9 That we are alleging as discipline.

10 JUDGE WEDEKIND: To that extent then?

11 MS. DEMIROK: Yeah.

12 JUDGE WEDEKIND: Again, because they didn't produce --
13 okay. What I would suggest you do is you make the -- if some
14 evidence -- if the company does try to put on evidence to that,
15 make your objection at that time and specifically identify at
16 that time what documents they failed to produce and the
17 paragraphs that they didn't respond to. And we'll deal with it
18 at that time. Okay.

19 MS. DEMIROK: Okay, thank you, Your Honor.

20 JUDGE WEDEKIND: Yeah.

21 MR. DAWSON: Your Honor, may I just for the record state
22 our objection and I guess I would also point out that in terms
23 of us being forthcoming, we did file a motion with Judge
24 Etchingham saying we're not going to be able to comply with the
25 subpoena. It was denied. We filed a petition with Your Honor

1 saying we're not going to be able to comply. It was denied.
2 So to say that we weren't communicating, I think is unfair. We
3 did file, you know, a request to postpone. We filed a request
4 -- a petition to revoke on the basis of undue burdensome.
5 Understanding that Your Honor denied the objection and we
6 understand that, but I think for the record, it's unfair to say
7 that we were silent about any problems that we were having.

8 JUDGE WEDEKIND: And I don't think I said that. And I
9 think what I was saying was the failure to specifically
10 identify what you did not respond to and the failure to turn
11 over what you had already found. I think that's the problem.
12 And by the way, and again, I was sympathetic to you coming into
13 this hearing. I understand. It's difficult being in your
14 shoes. I'm not denying that. Two weeks that the Board has
15 held, two weeks is sufficient time. Even in a case very
16 similar to this one. And you didn't come in today or yesterday
17 and say this is the problem we had, the specific problems we
18 had with specific paragraphs, what we found, what we turned
19 over, what we haven't found, why, this is what we need to do.
20 Instead you just gave the General Counsel a very, very large
21 file that took three hours to open and waited for the General
22 Counsel to tell us, tell me what wasn't in there.

23 I don't think that's good faith and that's my ruling and
24 you can appeal if you'd like. Okay.

25 MR. DAWSON: Thank you, Your Honor.

1 JUDGE WEDEKIND: That's the end of that. Obviously, any
2 time someone wants clarification of the ruling, no one hesitate
3 to ask. Okay. So where does that leave us at quarter to four?

4 MS. OVIEDO: We had a couple stipulations that we
5 discussed while we were off the record and we wanted to know if
6 Respondent wished to stipulate to the authenticity of the two
7 position statements that I had provided to the Region.

8 MR. DAWSON: I mean we don't have our drafts here in front
9 of us, but reviewing them, you know, it certainly doesn't jump
10 out as anything different than what we submitted. So you know,
11 I don't have a problem with that stipulation.

12 JUDGE WEDEKIND: Authenticity?

13 MR. DAWSON: Authenticity, correct.

14 JUDGE WEDEKIND: Okay. So stipulated.

15 MS. OVIEDO: We haven't marked them at this time. So
16 we'll just hold onto them and then if and when we do that,
17 we'll mark them and give you a copy.

18 MR. DAWSON: Oh, okay.

19 MS. OVIEDO: And if at any point you want to see them to
20 compare to your own file, we're happy to provide those to you.

21 JUDGE WEDEKIND: Any other preliminary matters?

22 MS. DEMIROK: I don't believe so, Your Honor.

23 JUDGE WEDEKIND: Do you want to do opening statements?

24 MS. DEMIROK: Let's do opening statements.

25 JUDGE WEDEKIND: Okay. All right. General Counsel. Did

1 you have something?

2 MR. DAWSON: No, Your Honor. Thank you.

3 JUDGE WEDEKIND: Okay.

4 MS. OVIEDO: Your Honor, this case is about an anti-Union
5 campaign and an Employer willing to go to unlawful means to
6 chill Union activity including discharging employee Thomas
7 Wallace and disciplining employee Mario Lerma. The Board is
8 able to recognize that a Union is most fragile and it's support
9 is most vulnerable during its organizing drive.

10 And in this case, Respondent which is a producer and
11 distributor of food products at the wholesale level caught wind
12 of a Union campaign at its Phoenix, Arizona warehouse facility
13 in January of this year and wanted to get in front of it.
14 Especially because the Teamsters Union had already established
15 a foothold in one of its California facilities.

16 Suddenly, Respondent began to show interest in the
17 concerns that employees had been voicing for over the past year
18 at its Phoenix facility. Concerns about medical insurance,
19 layoffs, shorts and damages being deducted from their wages,
20 along with Respondent making changes to their schedules on
21 short notice, forcing employees to scramble to find child care.
22 So to counter the Union's campaign efforts, Respondent began
23 holding a series of meetings, some of which were explicitly
24 Union prevention meetings.

25 During one such meeting on January 28th, employee Wallace

1 asked questions that signaled to Respondent that he was a
2 potential Union sympathizer. After this meeting ended,
3 Wallace's supervisor Jake Myers interrogated him about his
4 Union leanings. Wallace admitted to Myers that he knew the
5 Union members had better benefits. Respondent then learned
6 that Wallace was more than just a sympathizer. But later that
7 evening on the 28th, floor captain Art Manning saw Wallace and
8 several other employees attending a Union meeting at Denny's
9 that Manning was unlawfully surveilling.

10 Manning's presence at Denny's caused the Union meeting to
11 end abruptly. The frightened employees scattered but Manning
12 still took it upon himself to confront them as they left the
13 restaurant, telling them that they didn't need the Union.
14 Respondent admitted having knowledge of who supported the Union
15 and when it informed employees on February 24th that it knew
16 about the organizing campaign and knew exactly who was behind
17 it.

18 If Respondent had any doubts as to Wallace's support for
19 the Union, they quickly banished on March 31st after Wallace
20 spoke up during a town meeting. The very same meeting held by
21 Respondent to address issues such as healthcare benefits that
22 were driving employees to the Union.

23 Wallace's health insurance questions during the March 31st
24 meeting cemented Respondent's suspicions. Not only were his
25 questions textbook protected activity, but they also put

1 Respondent on notice that Wallace was more than just a Union
2 supporter. He was a strong leader and not afraid to stick his
3 neck out for other employees.

4 Given the resounding applause and cheers from other
5 employees after Wallace asked Respondent if they could get
6 their old healthcare plan back, it was clear that Wallace held
7 sway over the crowd. He was just saying what everyone had on
8 their minds. This presented the perfect opportunity for
9 Respondent to make an example out of Wallace and chill the
10 organizing campaign.

11 Less than a week after causing a stir with his healthcare
12 questions, Wallace was fired on April 6th. Respondent tried to
13 get Wallace to sign the severance agreement that would
14 interfere with his ability to communicate with his coworkers
15 about terms and conditions of employment or even his discharge.
16 Wallace was told during his termination that the decision was
17 made because Respondent's owners were offended by his conduct
18 and his questions regarding healthcare benefits at the March
19 31st meeting.

20 This alone is evidence of unlawful mode of animus,
21 however, Respondent's interrogation and surveillance of Wallace
22 as well as the timing of his discharge further support
23 Respondent's unlawful motivation and animus.

24 Respondent will claim that Wallace was discharged for
25 belligerently interrupting and abruptly leaving the March 31st

1 meeting. But the evidence presented will show that this
2 allegation is false. Respondent did not even bother conducting
3 an investigation into the matter, a fact which itself supports
4 a finding of unlawful motivation. Respondent cannot meet its
5 burden of establishing that it would have discharged Wallace
6 even in the absence of those protected activities.

7 Similarly, Respondent's actions toward employee Mario
8 Lerma were unlawful. Like Wallace, Lerma supported the Union
9 and attended the Union meeting on January 28th. The same
10 meeting that Manning unlawfully monitored at Denny's. Owing to
11 Respondent's suspicions of Lerma's Union sympathies, Lerma's
12 immediate supervisor, forklift manager David Garcia, went as
13 far as to search through Lerma's personal belongings for Union
14 authorization cards. After being caught in the act, Garcia
15 later admitted to looking for the Union cards because he
16 mistakenly believed that Lerma had given a coworker a Union
17 card in a break room.

18 On May 5th, just four days after Garcia's unlawful search
19 of Lerma's personal items, Lerma was summoned by the warehouse
20 operations manager Ivan Vaivao and escorted to the office of
21 vice president of operations, Mark Engdahl, a man who Lerma had
22 never met during the several years he had worked there. During
23 this meeting, Lerma was verbally reprimanded. Engdahl made
24 vague references to employees being intimidated on the work
25 floor and issued Lerma a warning that if Lerma kept up with his

1 reference protected activities, he could get into serious
2 trouble.

3 Respondent will argue that employees were coming to
4 management complaining that they were being harassed by Union
5 organizers. However, there is no evidence of employees being
6 harassed. Some employees may have gone to management because
7 they were concerned about how the Union could impact their
8 finances. But telling management that you do not want the
9 Union does not amount to an accusation of veritable harassment.

10 Respondent will claim that it did not issue any discipline
11 to Lerma. That instead it was just bringing him in for an
12 informal discussion. However, Respondent's own progressive
13 discipline policy shows counseling as the first step. Besides
14 it's hard to see how being called into an office and warned by
15 two high ranking officials could be seen as anything but
16 discipline.

17 Respondent is also alleged to have committed dozens of
18 independent 81 violations during the midst of the budding Union
19 campaign. Now keep in mind that this isn't Respondent's first
20 time before the Court. Respondent is a known violator of the
21 Act. In a previous Union organizing campaign in case number
22 337 NLRB 915, the Board found that Respondent violated the Act
23 by among other things suspending and disciplining an employee
24 for engaging in alleged misconduct during the course of his
25 Union solicitation and organizational activity. And it

1 appears, Your Honor, that Respondent may be up to its old
2 tricks again.

3 The testimony and evidence presented over the course of
4 this hearing will show that Respondent discharged Wallace and
5 disciplined Lerma in violation of Sections 83 and 1 of the Act
6 and that Respondent surveilled, threatened, interrogated its
7 employees, promulgated and maintained discriminatory rules and
8 made promises and grants of benefits in violation of Section 81
9 of the Act.

10 JUDGE WINDEKIND: Charging Party, you have anything to
11 add? Mr. Crowley?

12 MR. CROWLEY: No, Charging Party joins in on the General
13 Counsel's case and doesn't add much more other than there seems
14 to be quite a bit of evidence of promise of benefits, getting
15 in and probably dozens have scored enough scores to where the
16 activity significantly tainted the, you know, had a significant
17 chilling effect. This wasn't just activity with regard to one
18 or two people. From what I've seen, there was a lot of people
19 that was clearly intended to put a fear into people and to
20 participate in this effort to better their working conditions.

21 JUDGE WEDEKIND: The 10J proceeding, one of the issues
22 there is not an issue here.

23 MS. OVIEDO: Correct.

24 JUDGE WEDEKIND: And that is chilling effect, right?

25 MS. OVIEDO: Correct.

1 JUDGE WEDEKIND: You don't have any intention of putting
2 that evidence on here, do you?

3 MS. DEMIROK: Not -- I mean it may be touched on if it
4 comes out in like testimony that's relevant to other things,
5 but --

6 JUDGE WEDEKIND: Okay, but you're going to present that
7 evidence to the Court, not to me, correct?

8 MS. DEMIROK: Absolutely.

9 JUDGE WEDEKIND: Okay. Just want to make that clear.
10 Would you like to make an opening statement now or later?
11 Respondent?

12 MR. DAWSON: Your Honor, we'd reserve until we open our
13 case in chief.

14 JUDGE WEDEKIND: That's fine. Okay. Are you prepared to
15 go ahead with the first -- your first witness, General Counsel?

16 MS. DEMIROK: Your Honor, if we may just go off the record
17 for -- if we could go off the record for ten minutes and then
18 we'll call our first witness.

19 JUDGE WEDEKIND: Okay. Sure. And how long do you think
20 that witness will need today?

21 MS. DEMIROK: He may go into tomorrow depending on how
22 late we go today. But he will be, you know, I would say a
23 couple of hours.

24 JUDGE WEDEKIND: Okay.

25 MS. DEMIROK: At least.

1 JUDGE WEDEKIND: All right. Ten minutes.

2 MS. DEMIROK: Okay. Thank you.

3 JUDGE WEDEKIND: Ten after.

4 (Off the record at 3:57 p.m.)

5 JUDGE WEDEKIND: Let's go on the record. All right,
6 General Counsel, would you call your first witness?

7 MS. DEMIROK: General Counsel would like to call Mr. Ivan
8 Vaivao.

9 JUDGE WEDEKIND: Mr. Vaivao, can you raise your right hand
10 for me.

11 Whereupon,

12 **IVAN VAIVAO**

13 having been duly sworn, was called as a witness herein and was
14 examined and testified as follows:

15 JUDGE WEDEKIND: Thank you very much. Can you state your
16 full name and spell it for us?

17 THE WITNESS: My name is Ivan Leo Vaivao, I-V-A-N L-E-O V
18 as in Victor, A-I, V as in Victor, A-O.

19 **DIRECT EXAMINATION**

20 Q BY MS. DEMIROK: Hi, Mr. Vaivao.

21 A Hi.

22 Q My name is Sara Demirok. I'm an attorney for the federal
23 government. I'm going to be asking you some questions this
24 afternoon. Have you reviewed any documents in preparation for
25 your testimony today?

1 A No.

2 Q And have you spoken with anyone in preparation for your
3 testimony today?

4 A No.

5 MR. DAWSON: Objection to the extent that it's privileged.

6 JUDGE WEDEKIND: The answer was no.

7 Q BY MS. DEMIROK: Are you currently employed?

8 A Yes.

9 Q And where are you employed?

10 A Shamrock Foods.

11 Q When were you hired?

12 A I was hired in November of '97.

13 Q And what position do you work right now?

14 A I am the warehouse manager, Arizona Foods.

15 Q And how long have you worked in that position?

16 A Three years, going on three years.

17 Q Can you describe for us your duties in that position?

18 A Day to day staffing forecasting, oversee inbound and
19 outbound operations.

20 Q And could you just give us an indication of where you are
21 in the management hierarchy as far as who reports to you and
22 who do you report to?

23 A I report to Jerry Kropman who was the operations manager.
24 I have three managers that report to me.

25 Q And who are those managers?

1 A Day inbound, Brian Nicklen, Jeff Vanderwalker and Amando
2 Gutierrez.

3 Q Okay.

4 MS. DEMIROK: Your Honor, at this time I'm requesting to
5 continue my questioning under Rule 611(c) of the Federal Rules
6 of Evidence where appropriate.

7 JUDGE WEDEKIND: Any objection?

8 MR. DAWSON: We don't think that the witness has been
9 shown to be hostile at this point, but again Your Honor has
10 obviously discretion.

11 JUDGE WEDEKIND: Well, he's a stipulated manager and
12 supervisor.

13 MR. DAWSON: He's a stipulated supervisor, he is, yes,
14 Your Honor.

15 JUDGE WEDEKIND: So I'll grant the request.

16 Q BY MS. DEMIROK: Shamrock Foods Company, Respondent, has
17 two divisions, isn't that right?

18 A Two divisions. You have the foods division and dairy
19 division.

20 Q Okay. And the dairy division, it manufactures and
21 processes dairy products; is that right?

22 A Dairy products, yes.

23 Q And then there's Shamrock Foods which is the distribution
24 division, right?

25 A Foods distribution, yes.

1 Q And the distribution division is in the business of
2 distributing a variety of food products; is that right?

3 A Correct.

4 Q And they distribute on the wholesale sale level; isn't
5 that right?

6 A Repeat that again.

7 Q They distribute on the wholesale level?

8 A Yes.

9 Q And currently Shamrock Foods has four distribution
10 centers; is that right?

11 A One in New Mexico, Colorado, two in California and one in
12 Portland.

13 Q And are all of those locations up and running?

14 A Yes.

15 Q And the Phoenix warehouse is the largest of all of those;
16 is that right?

17 A Correct.

18 Q And do you know the address to the Phoenix warehouse?

19 A I don't know offhand.

20 Q Okay.

21 A Yeah.

22 Q And in the warehouse it houses dry goods; is that right?

23 A Houses dry goods, freezer and cooler.

24 Q And cooler. And it also houses some dairy products; is
25 that right?

1 A Yes, in the cooler, yes.

2 Q Okay. And aside from the warehouse, the Phoenix
3 distribution center also accommodates administrative offices;
4 is that right?

5 A There's some purchasing and sales offices there.

6 Q Is your office located there?

7 A No.

8 Q Where is your office located?

9 A Right in the warehouse.

10 Q In the warehouse?

11 A Yes.

12 Q Is Mark Engdahl's office located in the warehouse?

13 A He has an office there in the warehouse.

14 Q And is Kent McClelland's office located there?

15 A No.

16 Q Where is his office located?

17 A The Camelback corporate location.

18 Q What about Norman McClelland; does he have his own office?

19 A At the corporate location I believe. Not at our office.

20 Q But he has his own office?

21 A Not sure.

22 Q Okay.

23 A Really not sure, yeah.

24 Q And you mentioned Jerry Kropman. Is his office located at
25 the warehouse?

1 A Yes.

2 Q And what is Jerry Kropman's title?

3 A He's the operations manager, Arizona Foods.

4 Q And what about Natalie Wright? Is her office located in
5 the warehouse?

6 A Not currently, no.

7 Q Was it located there at some point in time?

8 A Her office is located in the administrative side.

9 Q So just so I got this right. This location has the
10 warehouse and it also has administrative offices and is there
11 also a meat plant that is connected to it?

12 A There's a meat plant connected to it, yes.

13 Q Okay. Is it all one big building and it's all connected?

14 A It's in all one big building. There's a meat plant's kind
15 of off to the side but there is connection, yes.

16 Q Okay. And what is Natalie Wright's title?

17 A At the time, she's HR coordinator generalist.

18 Q And what about Brian Nicklen; is his office located in the
19 warehouse?

20 A His office is located in the warehouse.

21 Q And what's his title?

22 A He is the inbound manager.

23 Q Now let's talk about the employees at the Phoenix
24 warehouse. How many employees work in the warehouse?

25 A Over 280 employees.

1 Q And what kinds of positions do they work?

2 A Varies, loaders, pickers, fork lifters, runners, throwers.

3 Q And these employees have never been represented by a labor
4 organization; is that right?

5 A Not to my knowledge, no.

6 Q Now Shamrock has a disciplinary policy, doesn't it?

7 A Yes.

8 MS. DEMIROK: Your Honor, if I may approach the witness?

9 JUDGE WEDEKIND: Yes. You don't need to ask.

10 Q BY MS. DEMIROK: I'm handing you what's been marked as GC
11 Exhibit Number 3. Have you ever seen this before?

12 A I've seen copies of it, yes.

13 Q And what is this?

14 A This is an employee handbook.

15 Q And the date on here is January 1st, 2014; isn't that
16 right?

17 A Correct.

18 Q Have you ever seen one with a more recent date?

19 A No, not that I know of.

20 Q To your knowledge, do you know if there's been any
21 revisions or amendments since January 1st, 2014, to this
22 handbook?

23 A Not sure.

24 Q Are the rules in here still in effect?

25 A Possibly, yes.

1 Q Were they in effect in March of 2015?

2 A Possibly, yes.

3 Q Is that a yes they were or you don't know?

4 MR. DAWSON: Your Honor, objection. I think Mr. Vaivao
5 has testified that he doesn't know if there have been any
6 modifications to this handbook. So I think it's going to be
7 difficult for him to say whether or not they're still in
8 effect.

9 JUDGE WEDEKIND: Do you have any personal knowledge
10 whether these rules are in effect?

11 THE WITNESS: Not in this workbook. So if there's a
12 revision to it, I have no knowledge of the revision. So if
13 you're asking me if these were, I'm pretty sure some of them
14 are.

15 Q BY MS. DEMIROK: But you've never seen a more recent dated
16 handbook, have you?

17 A I haven't seen a more recent one, no.

18 Q And you do discipline employees, don't you?

19 A Yes.

20 Q So you would know the disciplinary practices and policies?

21 A I do. I mean most of our disciplining goes through HR and
22 that's kind of how it is, right. So I present HR with a
23 disciplinary issue and through HR, we get, you know, the
24 corrections, whether it is an event or not.

25 Q Could you turn to page 64? Now the chart on this page, it

1 outlines Shamrock's disciplinary steps; doesn't it?

2 A Yes.

3 Q And Shamrock has a practice of enforcing these steps;
4 doesn't it?

5 A Yes.

6 Q Even today?

7 A Even today.

8 Q Am I right?

9 JUDGE WEDEKIND: Yes?

10 THE WITNESS: Yes.

11 Q BY MS. DEMIROK: And were these disciplinary steps in
12 effect in March of 2015?

13 A Yes.

14 Q What about April of 2015?

15 A Yes.

16 Q And in May of 2015?

17 A Yes.

18 MS. DEMIROK: Your Honor, I am going to move to admit
19 what's been marked as GC Exhibit Number 3.

20 JUDGE WEDEKIND: Any objection?

21 MR. DAWSON: No objection to the admission of the exhibit,
22 you know, for what it purports to be. The January 2014
23 handbook.

24 JUDGE WEDEKIND: It's received.

25 **(General Counsel Exhibit Number 3 Received into Evidence)**

1 Q BY MS. DEMIROK: Mr. Vaivao, do you ever handle employee
2 complaints?

3 A Yes.

4 Q Ever handle employee complaints about harassment?

5 A Yes.

6 Q And when you receive those complaints, you usually
7 investigate into the matter; don't you?

8 A I don't investigate. HR does. So I handle it in the
9 aspect that they bring it up to my attention. Immediately I
10 call HR and say hey, this is what happened.

11 Q Did you ever do -- excuse me. Did you ever do like a
12 preliminary investigation before?

13 A It's all directions from our HR department.

14 Q And Natalie Wright, she works in the HR department, right?

15 A Yes.

16 Q Is there -- I mean you've never done a preliminary
17 investigation?

18 A No. When it comes to harassment, automatically we refer
19 it to HR. So through HR, that's where, you know, the majority
20 of the instructions come from. Get a statement from employee
21 A, employee B, that type of thing.

22 Q And HR does that?

23 A HR does that.

24 Q And that was the same practice in 2014, wasn't it?

25 Nothing has changed since then?

1 A Nothing's changed.

2 Q I'm going to show you what's been marked as GC Exhibit
3 Number 4. Do you recognize this document?

4 A It's been a while, but yeah, I recognize it now from the
5 names on it.

6 Q And this is an email from you to Natalie Wright; is that
7 right?

8 A Yep.

9 Q And in this email, you're informing her that there's an
10 employee who may be coming to her regarding an issue; is that
11 right?

12 A Yeah.

13 Q And you also say that, you know, you asked him to write
14 down his statement about this incident that happened; is that
15 right?

16 A Right.

17 Q And then you also received statements from other
18 associates that were involved; is that right?

19 A Possibly, yes.

20 Q And so you were informing Natalie of an incident that came
21 to your attention?

22 A Yep.

23 JUDGE WEDEKIND: Sorry, let me interrupt. You use the
24 word possibly a lot. I have to write this decision. That's --
25 I don't know what to do with that answer. If you don't have

1 any knowledge, you can say I don't have any personal knowledge.
2 But if you do have personal knowledge, it would be better to
3 say yes or no or explain why you can't answer yes or no. So
4 possibly yes about statements. Did you receive any statements
5 or not?

6 THE WITNESS: I don't have any --

7 JUDGE WEDEKIND: To the best of your recollection.

8 THE WITNESS: To the best of my recollection, I don't have
9 any knowledge of that.

10 JUDGE WEDEKIND: Okay.

11 Q BY MS. DEMIROK: So I'm showing you what's been marked as
12 GC Exhibit Number 5. Now this looks like a statement from
13 Thomas Wallace; is that right?

14 A Yes.

15 Q And have you seen this before?

16 A I've seen this before, yes.

17 Q And does this statement relate to the email that we just
18 went over?

19 A The statement relates to the email. He doesn't report to
20 me directly. He reports to Armando Gutierrez.

21 Q Uh-huh.

22 A So this is the information that I get. What I do, I
23 immediately send it -- everything that I get I send over to
24 Natalie Wright. So him sitting down with me -- I mean he
25 doesn't report to me. He has a supervisor to report to. He

1 has a manager to report to, and then myself. So you know --

2 Q So I think my question was so the statement here, it
3 relates to the email that you sent to Natalie Wright; is that
4 right?

5 A Yes.

6 Q Okay. And because Thomas Wallace is mentioned in both of
7 these documents; is that right?

8 A Correct.

9 Q And so, if I understand you correctly, he gave you this
10 statement so that you could forward it to Natalie Wright; is
11 that right?

12 MR. DAWSON: Objection, Your Honor. That wasn't his
13 testimony. I don't think there was --

14 MS. DEMIROK: Your Honor, I'm asking him if that was --

15 JUDGE WEDEKIND: Well, it's a 611(c) witness.

16 State the question one more time.

17 MS. DEMIROK: Okay.

18 Q BY MS. DEMIROK: It was my understanding that you received
19 this statement from Thomas Wallace and get -- sent it to
20 Natalie Wright; is that correct?

21 A I didn't receive the statement from Thomas Wallace.

22 Q Okay. So who did you receive the statement from?

23 A So this is from Armando Gutierrez. He sends it up to me,
24 and then I forward it over to Natalie Wright.

25 Q And Mr. Wallace's statement wasn't the only one that you

1 collected; is that right?

2 MR. DAWSON: Objection, Your Honor.

3 JUDGE WEDEKIND: What's --

4 MR. DAWSON: Mr. Vaivao didn't collect statements of --
5 the question suggests a fact that Mr. Vaivao just said is
6 incorrect.

7 JUDGE WEDEKIND: Well, she didn't say who he collected
8 them from. I'm going to overrule the objection. Can you
9 answer that question? Is this the only statement you
10 collected?

11 THE WITNESS: I don't have any knowledge of it.

12 Q BY MS. DEMIROK: You don't know if you collected any other
13 statements?

14 A I don't have any knowledge of -- anything that's related
15 to this, I -- you know, I said -- anything related to this,
16 anything related to any issues, you know, I forward over. But
17 me collecting anything. No, I don't collect anything.

18 Q But you did collect this statement then send it to Natalie
19 Wright; isn't that right?

20 A That's what they -- all the information comes to me. All
21 right. So Armando comes to me with an issue and say: Hey,
22 this is the issue going on.

23 I said: Okay. Here's the information. I'm going to send
24 it over to HR.

25 So then HR directs us, you know, of the next step.

1 Q But you give HR the statements that you collect, right?

2 A Yes.

3 Q So you collect them from somewhere; isn't that right?

4 A Don't say I collected them. I didn't collect anything.

5 I'm the one that forwarded it over to HR. But as far as I'm --

6 it gets to me through my managers. So the manager says: Hey,

7 here's all the information of the issue.

8 I said: Well, this goes to HR.

9 JUDGE WEDEKIND: I think the problem is the word collect.

10 THE WITNESS: Right. I didn't proceed to collect

11 anything.

12 JUDGE WEDEKIND: Let's try a different question.

13 Q BY MS. DEMIROK: So you received employee statements --

14 A Yes.

15 Q -- is that right? Do you remember receiving any other

16 employee statements on this issue?

17 A I don't recall. I don't recall. I mean this is in July.

18 I don't -- I didn't recall. But everything that I do receive,

19 it gets forwarded over to HR.

20 JUDGE WEDEKIND: Are you going to introduce 4 and 5?

21 MS. DEMIROK: Not at this time. I may. So I'm going to

22 hand the witness what's been marked as 6(a) and 6(b).

23 Q BY MS. DEMIROK: Do you recognize these documents?

24 A I don't recognize the documents, but I'm pretty sure it

25 came to me.

1 Q How are you sure of that?

2 A Because I mentioned Thomas Wallace and me in the event.

3 Q These were the other statements that you sent over to
4 Natalie Wright; is that right?

5 MR. DAWSON: Objection. I don't -- I think he testified
6 that he didn't recall seeing these statements.

7 JUDGE WEDEKIND: Well, again, it's a 611(c) witness. He
8 said that they all come to him and that they all get sent to
9 HR. So I think there's enough connection here to ask the
10 question.

11 Q BY MS. DEMIROK: So these are the statements that you
12 forwarded to Natalie Wright?

13 A Yeah.

14 MS. DEMIROK: Your Honor, at this time, I'd like to move
15 to enter -- to admit GC Exhibit Number 4, GC Exhibit Number 5,
16 and 6(a) and 6(b).

17 JUDGE WEDEKIND: Okay.

18 MR. DAWSON: No objection, Your Honor.

19 JUDGE WEDEKIND: They're all received. Thank you.

20 **(General Counsel Exhibit Number 4, 5, 6(a) and 6(b) Received**
21 **into Evidence)**

22 Q BY MS. DEMIROK: Mr. Vaivao, you fired Thomas Wallace,
23 didn't you?

24 A I didn't fire Thomas Wallace.

25 Q Did you tell him that he was fired?

1 A I told him that he was terminated from the company.

2 Q But you were just the messenger?

3 A I was just the messenger. Yeah.

4 Q And you told him because -- you told him he was fired
5 because he was disrespectful during a meeting on March 31st;
6 isn't that right?

7 A I told him -- the direction from HR -- the direction with
8 HR said that Thomas Wallace was dismissed -- was terminated
9 from the company for disrespecting a senior officer of the
10 company. And that was the direction from James Allen.

11 JUDGE WEDEKIND: The question was is that what you told
12 him. I think that was the question, wasn't it?

13 MS. DEMIROK: That was the question. Thank you, Your
14 Honor.

15 THE WITNESS: I told him he was terminated for
16 disrespecting a senior office of the company. That's what I
17 told him.

18 Q BY MS. DEMIROK: And he was disrespectful during the March
19 31st meeting, wasn't he?

20 A He was.

21 Q And that's what you were referring to when you said you --
22 he was disrespecting a senior officer of the company; isn't
23 that right?

24 A Yes.

25 JUDGE WEDEKIND: You may have been asked, but apparently I

1 missed it. Were you at the meeting?

2 THE WITNESS: I was at the meeting, yes.

3 MS. DEMIROK: We'll take you back there, Your Honor.

4 JUDGE WEDEKIND: Okay, thank you.

5 Q BY MS. DEMIROK: And you told Thomas Wallace he was fired
6 on April 6th, 2015; is that right?

7 A I don't recall the date.

8 Q And I think you mentioned James Allen before. But he was
9 present with you when you fired -- when you told Mr. Wallace he
10 was fired; is that right?

11 A Yes.

12 Q And you also presented a separation agreement to Mr.
13 Wallace when he was terminated; is that right?

14 A James Allen did. I didn't present him any document.
15 James Allen was there to present that. So I was there to -- I
16 was there because -- ultimately, Thomas Wallace reports to me.
17 So I wanted to make sure -- James Allen called me and says:
18 Hey, we have to terminate Thomas Wallace. So okay. So I
19 joined. He -- and I need somebody from the warehouse to be
20 here. So yes. So I joined James Allen.

21 The instruction to James Allen is that the reason -- the
22 grounds for his termination was disrespecting a senior officer
23 of the company. So that's what I delivered. And the reason
24 why I wanted to be there, I wanted him to hear it from me.

25 Q Because he respected you, didn't he? In fact, he told you

1 -- even after you told him he was fired, he said I still -- I
2 respect you, didn't you?

3 A He told me he respected me. I brought him back. He had
4 issues in a former assignment in transportation. And a manager
5 asked me, you know: Hey, do you have room for Thomas Wallace
6 in the warehouse? I said yes. So Thomas Wallace knew that,
7 you know, he was one of my guys. He knew that.

8 Q So he had tried it out in transportation and it didn't
9 work out.

10 A It didn't work out.

11 Q But you took him into the warehouse, because you had room
12 for him; is that right?

13 A I had room for him, and I knew he did the job before.

14 Q And he did a good job, right?

15 A He did a good job.

16 Q Now did you see the separation agreement that he was
17 given?

18 A I didn't.

19 Q You never saw --

20 A I saw the paperwork, not that I read it. He was there
21 with James Allen. James Allen presented the paperwork to him.
22 Asked him to sign, not to agree but to receive. But I didn't
23 look at the separation agreement, no.

24 Q Was it your understanding that he was fired because he was
25 disrespectful in that meeting?

1 A I don't know the reasons why he was fired. I know he was
2 disrespectful. So that was the -- what James Allen had told
3 me, the reason why he was fired.

4 Q I'm going to take you back a little bit. There was a town
5 hall meeting on January 28th, 2015, wasn't there?

6 A I don't recall the dates. I mean, at that timeframe,
7 there was a lot of meetings going on. There was communication
8 meetings. There was town hall meetings. There was just --

9 Q A lot of different meetings. So there were the town hall
10 meetings, right?

11 A Yeah.

12 Q And there were communication meetings; is that right?

13 A There were communication meetings. I know that timeframe
14 there was a lot of meetings going on. So what the meetings
15 were -- I mean there was a lot of meetings that I attended.

16 Q Well, let's talk about the different types of meetings
17 that you attended from January through, let's say, April.
18 There were town hall meetings; is that right?

19 A There were town hall meetings, yes.

20 Q And this is where a lot of employees would come there,
21 right?

22 A Yes.

23 Q And there were also roundtable meetings during that time?

24 A I didn't present any roundtable meetings. I never -- I
25 didn't have any roundtable meetings with associates.

1 Q There --

2 A HR would have had roundtable meetings. Management would
3 have been there for the roundtable meetings, yes.

4 Q Okay. But you knew that they did have roundtable meetings
5 even though you weren't at any of them, right?

6 A There were roundtable meetings.

7 Q And then there were also these things called communication
8 meetings, right?

9 A There were communication meetings.

10 Q And these were the -- are these the same thing as union
11 education meetings?

12 A There was no union education meetings. There were
13 educational meetings, informative meetings that we -- part of
14 that was to -- we're going through schedule changes. Schedule
15 changes didn't pertain to everybody, but I mean we were going
16 through different changes around that time.

17 Q So were the union prevention meetings separate from those
18 meetings?

19 A They weren't union prevention meetings. All right. So
20 these were -- I was very, very clear. I was very, very clear
21 that these weren't union prevention meetings. These were
22 educational meetings to inform the associate of their rights,
23 inform the associate of their rights and inform the associate
24 that the organizers that are out there have rights.

25 Q And in those same meetings you would talk about things

1 like schedules changes. Is that what you said?

2 A In the event that associates brought up other issues, yes.

3 Q Okay. Now at the end of January -- you're not sure if it
4 was January 28th. But near the end of January, do you -- did
5 you attend a town hall meeting?

6 A I probably did. There's -- if there's a town hall
7 meeting, I would have attended, yeah.

8 Q Did you attend a town hall meeting where Mr. Engdahl
9 conducted it?

10 A Yes.

11 Q And the main focus of that meeting was unions, right?

12 A I don't -- I'm not sure. I'm not -- I don't recall I mean
13 what the main objective of the meetings. Majority of those
14 meetings were benefits. That was the hot bed of our -- of
15 those town hall meetings were benefits. I don't -- I'm not
16 sure if -- you know, if unions were discussed. But town hall
17 meetings, those were upper management meetings. Those were --
18 Mark Engdahl would sit up and talk. Communication meetings
19 were the ones that I conducted.

20 Q But you attended the ones --

21 A Yes.

22 Q -- the town hall ones, right?

23 A Yes.

24 Q And in particular, you attended one in late January, where
25 Mr. Engdahl conducted it, right?

1 A Correct.

2 Q But you don't remember if they talked about unions?

3 A I'm not sure. I'm not sure what the topics are of -- you
4 know, of those meetings. I'm not sure of the topics.

5 Q Do you remember which employees attended that meeting --
6 those meetings?

7 A Say again.

8 Q Do you remember what employees attended the town hall
9 meeting at the end of January?

10 A That -- if it's a town hall meeting, it could be anybody,
11 anybody from the administrative offices, warehouse, meat plant.
12 When it's a town hall meeting, it's everybody. It's a meeting
13 to inform associates of --

14 Q Okay.

15 A -- what's going on in the company.

16 Q Okay. Now in the town hall meeting at the end of January
17 -- because there were other town hall meetings. So I want to
18 make sure we're talking about the same one, the one where Mr.
19 Engdahl conducted it. Do you recall if any employees asked
20 questions during that meeting?

21 A That I don't know. I mean there's -- within those town
22 hall meetings, it could be 50 questions. Those town hall
23 meetings, everybody just raised their hand and, you know,
24 sometimes I'm the one that's on the sideline and says hey,
25 guys, we need to go back to work. I -- you know, we can't --

1 you know, we -- when it surpasses 60 minutes, an hour, I'm the
2 kind of one that waves in the background and says hey, can we
3 wrap this up.

4 Q So during that meeting, several employees asked questions,
5 didn't they?

6 A Yes. Yes, there were several employees that asked
7 questions. Yes.

8 Q But you don't recall which employees asked questions --

9 A No.

10 Q -- during that meeting? Could one of those employees have
11 been Thomas Wallace?

12 A I don't know. He -- I know Thomas Wallace asked the
13 question.

14 Q You know he asked a question?

15 A I know he asked a question.

16 Q What'd he ask in that meeting?

17 A I'm not sure that meeting or --

18 Q Well, if you're not sure which meeting, then let's not go
19 there.

20 A Well, the town hall meeting, right. So one of the town
21 hall meetings he asked a question.

22 Q Was it the one where Mr. Engdahl conducted it?

23 A I'm not sure which one. Mr. Engdahl is present at every
24 town hall meeting or most of the town hall meetings.

25 Q Well, my question was was that the one where Mr. Engdahl

1 conducted it?

2 A He conducts all the meetings. I want to make it clear
3 that he's -- he opens up. Mr. Engdahl is the vice-president of
4 operations. So he opens up, you know, the meetings. He opens
5 up every meeting, every town hall meeting.

6 Q So --

7 A Upper management opens up every town hall meeting.

8 Q But the January 28th meeting, or the one near the end of
9 January, when you were discussing how Mr. Engdahl conducted the
10 meeting, that would mean that he did most of the talking.

11 That's what conducting is. Would you agree?

12 A I agree. I agree that he spoke most of the time. But for
13 me to say that I remember Thomas Wallace asking a question on
14 that meeting, I know Thomas Wallace asked a question in a town
15 hall meeting. I know that.

16 Q Okay.

17 A I know that for a fact.

18 Q All right. Well, let's talk about some other meetings.

19 Okay. So, first, let's talk about some meetings that you held
20 on about February 5th, 2015. Now you held meetings with
21 employees throughout that day, didn't you?

22 A Around that timeframe, yes.

23 Q And you called those communication meetings, right?

24 A Yes.

25 Q Who instructed you to hold those meetings?

1 A Those meetings were from Natalie Wright. Natalie Wright
2 had some follow-ups. Initially, those meetings were -- we were
3 focused on three topics, three agendas on those meetings.

4 Q If you don't mind, I just asked you who instructed you to
5 hold those meetings.

6 A I think Natalie Wright.

7 Q You received those instructions by email, didn't you?

8 A Either email or phone call.

9 Q Did you get any -- did you receive any emails regarding
10 these meetings?

11 A No. The -- for her it was to set up the meeting. All
12 right. So I set up the meeting. I set it up on her Outlook.
13 So that way she knows where the meeting is, who's going to
14 attend. So I did schedule the meetings, yes.

15 JUDGE WEDEKIND: Her question was -- it's very important
16 that you ask the question -- answer the question asked.
17 Otherwise, we just go round and round. Her question was did
18 you receive -- or were there any emails about --

19 Repeat the question.

20 Q BY MS. DEMIROK: So, first, I asked who instructed you to
21 hold those meetings, and did you receive those instructions by
22 email. Well, I asked it -- I said and you received those
23 instructions by email; isn't that right? And I believe you
24 said yes. And I said who -- you know --

25 MR. DAWSON: Objection. That's not what he said.

1 JUDGE WEDEKIND: He said --

2 Go ahead.

3 THE WITNESS: Either email or phone call.

4 Q BY MS. DEMIROK: Okay. Email or phone call. Did you
5 receive any other emails regarding these meetings, either --

6 MR. DAWSON: Objection to other emails.

7 JUDGE WEDEKIND: Well, she hasn't finished the question
8 yet.

9 MR. DAWSON: All right.

10 JUDGE WEDEKIND: Go ahead. Oh, I see. Just take out --

11 MS. DEMIROK: I'll rephrase.

12 JUDGE WEDEKIND: -- the word other. Just take out the
13 word other.

14 Q BY MS. DEMIROK: Did you receive any emails ever about
15 these meetings, even that related to it any way whatsoever?

16 A From Natalie Wright, I know -- because I was coordinated
17 with her.

18 Q From anybody not just Natalie Wright. From anybody.

19 A I don't know. I don't know if it's anybody else, but I
20 know --

21 JUDGE WEDEKIND: I didn't understand your question about
22 Ms. Wright. Did you or did you not receive emails from Ms.
23 Wright?

24 THE WITNESS: From Natalie Wright, yes.

25 JUDGE WEDEKIND: Okay.

1 Q BY MS. DEMIROK: Did you receive any emails from anybody
2 else?

3 A I don't know.

4 Q Did you ever email anybody about what was said during any
5 of those meetings?

6 A I don't have no knowledge of it. I don't recall. I don't
7 know if I did.

8 Q Do you use email a lot at work?

9 A I use email quite a bit.

10 Q And like your email other managers quite frequently, don't
11 you?

12 JUDGE WEDEKIND: Yes or no.

13 THE WITNESS: Yes.

14 Q BY MS. DEMIROK: You were conducting these meetings all
15 day long in about February 5th, 2015; is that right?

16 A It wasn't all day long. It was depending on the
17 schedules, depending on when the associates came in. So the
18 least disruptive to their schedules. So those were the
19 opportune times for us to conduct these meetings, either right
20 prior to their start time -- so we conducted, the most, four
21 meetings a day, four meetings on the day.

22 Q Because you wanted to meet with every associate, didn't
23 you?

24 A That was the goal. That was goal, to make sure that every
25 associate -- did we meet with everybody? I don't think we met

1 with everybody. We didn't have that many meetings.

2 MS. DEMIROK: Your Honor, before we go on, I would just
3 like to point out that any of these emails that he may or may
4 not have had would be responsive to the -- even just the
5 instruction or the scheduling of the meetings would be
6 responsive to the subpoena, none of which have been produced.

7 Q BY MS. DEMIROK: Now going back to the meetings. You held
8 one of those meetings at around 9:00 in the morning; is that
9 about right?

10 A There were, you know, meetings throughout the day. So
11 9:00 sounds right. The crew starts shortly after that, yes.

12 Q And you started that meeting just as you had wrapped up
13 another meeting; is that right?

14 A I'm not sure. I don't think there was -- the earliest of
15 those meetings at that time would probably be 9:00, because
16 that's the first major group that comes in.

17 Q Okay.

18 A But it would be -- yes, it would be a meeting. And then
19 you have another meeting. And then depending on the next
20 schedule, all right, the next time -- the schedule. So --

21 Q Okay. And during these meetings, Natalie Wright was with
22 you, right?

23 A Yes.

24 Q And all of the meetings were held for the same person --
25 purpose, weren't they?

1 A All the meeting were held for the same purpose. Yes.

2 Q And like you said before, you wanted to follow up, because
3 -- follow up with employees about some issues, right?

4 A Natalie had some follow-ups on some issues. So yes, those
5 meetings were -- the purpose of those meetings were solely to
6 discuss wages, compensation, health insurance, and pension.
7 But in the event that any other topics came up, yes. There
8 were other topics that came up. But I remember an associate,
9 Pam Weber, brought up an issue with the -- her throughput, with
10 the conveyor system. She's out merge operator. I remember
11 Thomas Wallace asked a specific question on that. And the
12 reason why I remember, because he asked me for -- what was
13 Shamrock's plan for layoffs in the upcoming summer. And I told
14 him that hey, I had to stop hiring around January. And
15 hopefully, by the time he comes around, we won't have to do any
16 layoffs. We -- our plan is not to do any layoffs.

17 Q We'll come back to that, because he wasn't at this 9:00
18 meeting that we were talking about, was he?

19 A That I don't know exactly who were at the meetings, but in
20 those meetings, were those -- the purpose of those meetings,
21 those meetings that were held, those were the subject. With
22 Natalie Wright -- when I was there with Natalie Wright, those
23 are the subjects that was discussed. Those are the three. And
24 it was -- the purpose was to discuss those three issues that
25 have been brought up by associates to Natalie.

1 Q So the purpose was to follow up with employees because, as
2 you put it, they get lost in the shuffle at the big town hall
3 meetings; is that right?

4 A That wasn't -- that's not what I said.

5 Q That's not what you said?

6 A No, that's not what I said. I said --

7 Q You never said that?

8 A -- this is -- these are communication meetings that
9 Natalie had issued that Natalie wanted to follow up with
10 associates.

11 Q You never told employees that you wanted to follow up with
12 them because, as you put it, they got in the shuffle at the big
13 town hall meetings?

14 A That I never said.

15 Q You never said that.

16 A The subject of those meetings were -- Natalie Wright was
17 conducting -- she was the one with the information.

18 Q I got your answer.

19 A I was solely there --

20 JUDGE WEDEKIND: There's no question on the table.

21 Q BY MS. DEMIROK: We're already gone over what the purpose
22 was. But at this meeting, at about 9 in the morning, on
23 February 5th, you said you wanted to get a feel for some issues
24 the employees were facing, didn't you?

25 A I don't recall saying that.

1 Q Wasn't the purpose of the meeting to talk about certain
2 issues that they were having?

3 A No, the purpose of -- that wasn't the purpose of the
4 meeting. I already told you what the purpose of the meeting
5 was. The purpose of the meeting is to go over the pensions.
6 This meeting was Natalie's meeting. I was there strictly to
7 make sure that if there are any questions coming out with the
8 new 24-hour operational schedules. That's the reason why I
9 was there. I was there just in case that comes up, those
10 questions came up as far as schedules. I was there to help.
11 And in the event any other questions relating to the warehouse
12 came up, I was there to either answer them or offer follow-up,
13 you know, to come back to it. But so, the purpose of those
14 meetings again were -- Natalie -- those were Natalie's
15 meetings, that I was there for support just in case somebody
16 said hey, anything about the new schedules.

17 Q So you never said that you wanted to get a feel for some
18 of the issues the employees were facing?

19 A I don't recall saying that. I don't believe I said that.

20 Q So you never said that?

21 A I don't believe I said that, because it wasn't my meeting
22 to begin with. But in the even that they brought those -- any
23 issues up, yes, I was there to answer any questions that I
24 could answer at that time or offer a follow-up on a later date.

25 Q So you never really elicited from them what their issues

1 were?

2 A I didn't, no.

3 Q You never did?

4 A I never did.

5 Q So you never said to them that you wanted to get their
6 feedback on issues?

7 A Like I said, I never -- I was never the front runner for
8 those meetings. Like I said, I was there just to support. I
9 never said that. So I don't believe I said that. We always
10 have, you know, are there any questions, that type of thing.
11 So in the event that they brought up some questions, I was
12 there to answer some of those questions that maybe Natalie was
13 not familiar with. But we made sure we kept on a strict --
14 because we wanted the guys to come in and get this information
15 and get back out. So we tried to center all the communication
16 around those issues that she had brought up.

17 Q You took notes in that meeting, didn't you?

18 A I didn't take no notes in meetings. I don't take no notes
19 in meetings.

20 Q But you told them you were going to take notes, didn't
21 you?

22 A I don't -- like I said, I don't take notes. Natalie, for
23 the most part, takes notes. If we needed --

24 Q Did you tell -- you told the employees that you were
25 taking notes; isn't that right?

1 A I didn't tell the employees I was taking notes, no.

2 Q So you didn't tell them that you were going to take notes,
3 so that you could be sure to look into any issues raise; is
4 that right?

5 A I didn't tell -- the notes -- I didn't take notes. To put
6 it -- I mean like I keep on saying I didn't write any notes. I
7 didn't take any notes.

8 Q I'm asking you what you said to employees.

9 A I didn't say that. That I didn't say. Natalie was there
10 to take notes. I'm pretty sure any issues that came up she
11 would have forwarded to me for follow-up.

12 Q But Natalie took notes during the meeting; is that right?

13 A I don't know if she did.

14 Q Now this meeting, at about 9:00 a.m., on February 5th,
15 after you told them what the purpose was, had the introduction,
16 an employee first asked you who decided to have the meetings
17 and why; isn't that right?

18 A That I don't remember. I don't remember who decided to
19 have the meeting.

20 Q Did an employee ask you why they were there?

21 A I'm pretty sure somebody asked me who decided to have the
22 meeting.

23 Q That sounds familiar, that question?

24 A That sounds familiar, who decided to have a meeting.

25 Q Yeah, and why, right?

1 A And why, yeah.

2 Q And you responded to that question, didn't you?

3 A If I responded, the reason why was to make sure that we
4 get this information out to them.

5 Q But you didn't use those exact words, did you?

6 A I don't know. I don't know if I used those exact words,
7 but that was the information that was given.

8 Q In fact, you said, in response to why they were having
9 these meetings and who decided to have them, you said: We did.
10 We wanted to get in front of it. Isn't that right?

11 A I don't remember. I don't remember saying that. But I'm
12 pretty sure I owned up to it and said hey, yes. I'm pretty
13 sure I owned up to it and says yes, I decided. Majority of the
14 time I said I decided. I decided to conduct the meeting, so --

15 Q Did you ever say we wanted to get in front of it?

16 A I'm not sure I said that. I'm not sure I said that, get
17 in front of -- I probably said hey, one of -- you know, give
18 you some information on some of the issues that you brought up
19 to Natalie, but not get in front of it, no.

20 Q So you never said that?

21 A I don't recall. I don't remember.

22 Q And just to be clear, you're saying you don't recall
23 saying in that meeting -- you don't recall if you did or you
24 didn't or that you recall that you didn't say that?

25 A I don't know. See, that's the thing. I don't know the

1 exact words, just -- I don't know the exact words that I used,
2 but the message I was getting out there, that hey, we're -- we
3 have -- Natalie has to follow-up on these meeting for --
4 because there are a lot of issues regarding around -- circling
5 around those two topics. But I mean it's hard to recall. It's
6 been a while.

7 Q So after they asked you why they were there, you gave them
8 a response. You're not exactly sure what that was. And then
9 you continued to ask what the big issues were, didn't you?

10 A I didn't ask what the big issues were. Those were
11 centered just for those -- and just --

12 Q Do you --

13 A -- for those three issues. I didn't say what were -- the
14 big issues were.

15 Q You never said that?

16 A I --

17 Q Okay.

18 A -- never said that. I mean these meetings were very --
19 the agenda for these meetings, when I walked in with Natalie
20 and says hey, let's just cover these meetings, because we know
21 there's going to be other issues. But let's stick to the
22 script. This is the script right here. They've been asking
23 for the healthcare benefits, explanation of the pension.
24 They're asking for wages. The majority of the meetings were
25 centered around these three topics. It wasn't --

1 Q And employees raised issued, didn't they?

2 A Some did, yes. Not very many. Some did. Probably one.

3 In those small meetings, probably one meeting.

4 Q The --

5 A The ones that I remember was the ones that were asked
6 directly to me, that I deal with, the Pam Weber situation. And
7 I told her that -- from those meetings, I told her hey, this is
8 what you need to be doing. So I remember questions that are
9 asked directly to me in some of those meetings. But was it the
10 9:00 meeting? I don't know. Those four meetings or -- most
11 four meetings, three meetings, two meetings a day.

12 Q Well, let's talk about the one in the morning at 9,
13 February 5th, 2015. That meeting lasted over an hour, didn't
14 it?

15 A I don't recall that. I don't recall meetings lasting over
16 an hour. I don't recall that it lasted over an hour. I think
17 we scheduled it for a half an hour. Some ran short. Some ran
18 long.

19 Q And you had complaints about medical benefits during that
20 meeting, didn't you?

21 A Yes. There were concerns about the medical benefits, the
22 HSA. Those were -- that was a lot of the questions with the
23 HSA. But Natalie was there to provide information on that.

24 Q There were some safety concerns that were raised in that
25 meeting too, right?

1 A There was a number of issues. There was a number of
2 issues. It could be anything. There were a number of issues
3 that, you know --

4 Q Someone brought up an issue about not having the right
5 ladders. Do you remember that?

6 A I don't remember not having the right ladder. That I
7 don't remember.

8 Q There were a variety of issues raised by employees in that
9 meeting, right?

10 A Issues that I remember, yes. There were different issues.
11 Most of them were specific to their work conditions. Pamela
12 had spoke, you know, on her work condition. And I remember
13 that, because I followed up and had a resolution for her that
14 day, is the reason why that sticks out.

15 Q Some of the employees were really passionate in telling
16 you their concerns, weren't they?

17 A If they did, yes. The employees that opened up, they were
18 pretty passionate.

19 Q And when that meeting ended, you told them that you
20 appreciated the feedback; is that right?

21 A I appreciated all their questions, their concerns.

22 Q And you ever -- even told them that whether they got
23 passionate or not, it was good feedback, right?

24 A I don't remember saying that. That I don't remember
25 saying.

1 Q Employees were passionate during this one, weren't they?

2 A I remember one person that was passionate, getting
3 married. Eric Diaz, he was passionate. I remember that
4 associate. He was passionate.

5 Q What was he talking about?

6 A Talked about issues that -- talked about hey, I -- start
7 times, that type of thing.

8 Q Talked about family values, right?

9 A I don't recall that, no.

10 Q Now at the end of the meeting, after you told them that
11 you appreciated their feedback, you said the feedback was good
12 to open your eyes to what's going on; isn't that right?

13 A I didn't -- I don't remember saying that.

14 Q You didn't say that?

15 A I mean like do you have anyone that was there that jogged
16 my memory? But --

17 Q Like an employee was there --

18 A Yes.

19 Q -- to jog your memory? Mr. Fitz, do you know him?

20 A I know him very well.

21 Q He was at that meeting, right?

22 A Yes.

23 Q Does that jog your memory?

24 A That jogs my memory, yes. He was there.

25 Q So, and then you said -- well, let's go back and see if it

1 jogs your memory on some of these other things. You heard
2 complaints about safety concerns, didn't you?

3 A Not in that meeting. Not that I recall, safety concerns
4 at that meeting, no.

5 Q And the family values?

6 A I don't recall that either. The biggest thing that I
7 recall from that meeting from Steve was medical benefits.

8 Q And at the end, after you told them that you appreciated
9 their feedback, now that your memory is jogged, is it -- did
10 you tell them it was good to open your eyes to what's going on?

11 A I didn't say that.

12 Q You didn't say that?

13 A I didn't say that.

14 Q And now that your memory is jogged, did you say whether
15 they got passionate or not, it was good feedback?

16 A Never said that.

17 Q Never said that?

18 A No.

19 Q And how about in the beginning, when you said: We did.
20 We wanted to get in front of it. Did you say that?

21 A I said I did.

22 Q You never said that you --

23 A I said I did. If the question was asked, who called this
24 meeting, the only person that asked me that was a guy named
25 Matt Sheppard.

1 Q Uh-huh.

2 A He's the one that asked me who wanted this meeting. And I
3 said: I did.

4 Q So you never said: We did. We wanted to get in front of
5 it? You never said that?

6 A I never said that. He wanted a name. I remember this
7 clearly. Matt Sheppard wanted a name, who was responsible for
8 the meeting. And I said I did.

9 Q To get in front of it, right?

10 MR. DAWSON: Objection, asked and answered.

11 JUDGE WEDEKIND: Sustained.

12 Q BY MS. DEMIROK: So like we talked about before, you were
13 -- the goal was to meet with all the employees, right?

14 A The goal was to meet with all the employees, yes.

15 Q And after this one, most likely, there was another group
16 that came in.

17 A Right.

18 Q For how many days were you having these meetings?

19 A We had meetings for that week, and then we stopped for
20 about a couple weeks, because it was based on Natalie's
21 schedule.

22 Q Well, let's talk about another meeting in February. This
23 one was held on February 24th, 2015. Do you recall that
24 meeting?

25 A I don't recall. You remember who was there?

1 Q Brian Nicklen was there. Do you --

2 A Brian Nicklen. I remember being in a meeting with Brian,
3 yes.

4 Q And you held several meetings on that day as well?

5 A I had -- yes. I don't remember how many meetings, but the
6 most four. I know that. The most four we put in because of
7 schedules. I've had one meeting on one day, two, three. But
8 the most that we schedule is probably four.

9 Q Okay. And you held one of these in the afternoon on
10 February 24th, didn't you?

11 A Most likely, yes.

12 Q And Brian Nicklen was at this meeting, wasn't he?

13 A Brian Nicklen. If it's associates reporting directly to
14 Brian Nicklen, yes, he would be there with them.

15 Q And if you could remind us. What's Brian Nicklen's title?

16 A He's the inbound manager.

17 Q Now at that meeting, how many employees were present?

18 A Eight to 10 in a small -- it was a very small room. About
19 eight to 10.

20 Q And is that the same for the other meetings we were
21 talking about on February 5th, about eight?

22 A We start off in a different room, and then we went over.
23 So there's two meeting rooms.

24 Q But as far as the number of employees?

25 A It's the same. It's roughly around that, you know, eight

1 to 10.

2 Q Okay. Now speaking about the February 24th meeting, now
3 at the beginning of the meeting, you told the employees what
4 the meeting was about, didn't you?

5 A Yeah.

6 Q And you said that you were there to educate them about
7 unions, didn't you?

8 A Yes.

9 Q In fact, you said that you had to continue with these
10 education meetings, because employees were still being
11 approached by the Union; isn't that right?

12 A Yes.

13 Q And because employees were coming to you with concerns;
14 isn't that right?

15 A That's right.

16 Q And you explained that these employees that came to you
17 expressed several concerns; isn't that right?

18 A Yes.

19 Q First, you told them that the employees were concerned
20 about what the union organizers were telling them, didn't you?

21 A I don't remember exactly those words, but what I did say
22 is that there's a growing concern that associates come to me
23 virtually every and day and says hey, am I going to lose my
24 job? Those are the things that are -- that were concerning for
25 some of the associates. Am I going to lose my job if I don't

1 sign the card?

2 Q And that was based on what your understanding -- they were
3 concerned about what the union organizers were telling the; is
4 that right?

5 A Correct.

6 Q And in this meeting, you said that these employees'
7 concerns were very, very specific to those employees; is that
8 right?

9 MR. DAWSON: Objection. I'm sorry. Can you -- I'm sorry.
10 Go ahead. Withdrawn. I don't think I understood the question.
11 I apologize.

12 JUDGE WEDEKIND: Can you answer the question?

13 THE WITNESS: Go ahead. Can you ask the question again?

14 Q BY MS. DEMIROK: Sure.

15 A I don't know --

16 Q Yeah, no problem. So in this meeting on February 24th,
17 you were telling the employees about other employees coming to
18 you with their concerns. You also testified that they were
19 concerned about what the union organizers were telling them.
20 And then my next question was, in fact, you told the employees
21 in the meeting that their concerns -- the employees who were
22 concerned were concerned about things that were very, very
23 specific to them; isn't that right?

24 A Well, the concerns were specific to the employee. They
25 brought up am I going to lose my job? So it's specific to

1 them, yes.

2 Q Right. And you told the employees in the meeting that,
3 right?

4 A I said these concerns are specific to the employees. So
5 I'm pretty sure it's a common concern.

6 Q Yeah. And you said that the employees' concerns were
7 related to their financial affairs, right?

8 A Employees' concerns were related to their specific
9 financial affairs, yes.

10 Q And the other thing you said the employees were concerned
11 about was being associated with the wrong people, didn't you?

12 A I'm not sure I said associated with the wrong people. I
13 don't understand. I don't recall. Or I don't believe I said
14 associated with the wrong people. I never said anybody is
15 associated with anybody. I never referred to you associating
16 with the wrong people. Associates were coming up to me and
17 saying: Hey, am I going to lose my job if I don't sign? I
18 said: No, you're not going to lose your job for -- if you're
19 not going to sign. The majority of those meetings, I was very
20 clear and say hey, they have rights too. Associates have
21 rights. The organizers have rights. I even suggested going to
22 NLRB to find out, because the growing concern was they were
23 getting frustrated with me that, hey, I'm coming to you with an
24 issue. And why can't you stop this? So I felt like I had to
25 tell them that hey, the organizers have rights too. I was very

1 clear with that. I got some feedback. I got some kind of
2 backlash from associates saying that he just gave them their
3 rights. Now they're going to continue to do this even more.

4 MS. DEMIROK: Your Honor, if I could have a moment.

5 JUDGE WEDEKIND: Sure. What's your plan tonight? What do
6 you want? Is there a breaking point? Or how much time do you
7 want this witness to be on the stand?

8 MS. DEMIROK: At some point, I will have to leave for
9 personal reasons.

10 JUDGE WEDEKIND: And the court reporter has a plane to
11 catch, but not till 9. But what's your plan? I don't know how
12 long it takes to get to the airport. But in any event, what's
13 your plan with this witness?

14 MS. DEMIROK: I would like to keep going for another 20 or
15 30 minutes, but then we'll have to -- you will have to -- that
16 won't be the end of everything that we have.

17 MR. DAWSON: Your Honor, we have a witness we scheduled at
18 6. May I step out and make a phone call or if that would --
19 (Counsel confer)

20 JUDGE WEDEKIND: If it's 20 minutes, you'll be okay.

21 So you think, in 20 minutes, you'll have a good breaking
22 point or do you want to break now?

23 MS. DEMIROK: I'm not sure if any place is going to be a
24 good breaking point.

25 JUDGE WEDEKIND: That's the problem. Okay.

1 MS. DEMIROK: But maybe I could confer with counsel really
2 quickly before I --

3 JUDGE WEDEKIND: Okay, go ahead.

4 MS. DEMIROK: Do you mind if we step outside?

5 JUDGE WEDEKIND: Sure. Let's go --

6 MS. DEMIROK: Go off the record?

7 JUDGE WEDEKIND: -- off the record.

8 (Off the record at 5:19 p.m.)

9 Q BY MS. DEMIROK: So we were talking about --

10 MS. DEMIROK: We're on the record, right?

11 JUDGE WEDEKIND: Yes.

12 Q BY MS. DEMIROK: So we were talking about the February
13 24th meeting, the one that held in the afternoon. And we had
14 left off with -- I had asked you whether or not you said to the
15 employees that some of the concerns you were hearing were that
16 some associates were concerned about being associated with the
17 wrong people; is that right?

18 A No.

19 Q That never happened?

20 A I don't believe I said that. The concerns were pay, am I
21 going to lose my job. Those are the concerns that associates
22 were bringing to me. So I wanted to make sure that they
23 understand that hey, those weren't true.

24 Q So the only concerns that you told the employees that were
25 coming to you were related to financial affairs of employees;

1 is that right? It was all wage related or --

2 A Not necessarily. I remember losing your job was a big
3 one.

4 Q That would have to do with someone's financial affairs,
5 right?

6 A Yes.

7 Q Or their wages --

8 A Or wages.

9 Q -- deals with their financial affairs, right? So would it
10 be fair to say that what you've testified to is that the only
11 concerns that came to you were things related to employees'
12 financial affairs?

13 A Not necessarily. There was harass -- there was an
14 associate that reported that hey, I refused to sign. They
15 threw pens at me. So there was other -- these are other --
16 there are concerns too.

17 Q So you never said that employee concerns were valid, that
18 they were valid concerns, that they didn't want to be
19 associated with the wrong people?

20 A I don't know if those are the words that I used. But
21 associate with the wrong people, no. I didn't identify that --
22 associating with the wrong people. The issue that they were
23 bringing up was valid, that yes, am I going to lose my job if I
24 don't sign the card.

25 Q So you never told the attendees of this meeting that an

1 employee came to you and said I don't want you guys to
2 associate me with somebody I don't want to be associated with;
3 is that right?

4 A I don't remember that. I don't recall that complaint.

5 Q And so, you never -- and then -- so you never told them
6 those were valid concerns either, did you?

7 A Not in those words. Either -- I mean I might have used
8 some in that line, but all the concerns that they brought up
9 were valid concerns, you know. Some of it, the associates were
10 scared for their jobs. They didn't know what was going on.

11 Q And you told them they were valid concerns, right?

12 MR. DAWSON: Objection.

13 THE WITNESS: I don't use those --

14 MR. DAWSON: I think the question may not be clear. Are
15 we talking about the -- all of the complaints or are we talking
16 about the specific complaint about association?

17 JUDGE WEDEKIND: I think we're talking about the
18 complaints that he says he did receive.

19 MR. DAWSON: Okay.

20 MS. DEMIROK: That's correct.

21 JUDGE WEDEKIND: And so, the question is did you tell them
22 they had valid concerns?

23 THE WITNESS: Maybe not in those words, but I mean those
24 concerns were -- yes, they were valid concerns from the
25 associates. But I'm not sure those were the words. Maybe I

1 said something in that respect, but I wanted them to make sure
2 that their concerns was, you know -- was important.

3 Q BY MS. DEMIROK: And all these concerns that were coming
4 to you, that's why you continued to have these education
5 meetings, wasn't it?

6 A That's what I told them. As long as these concerns were
7 coming out, I need to address them. I want you guys to
8 understand that associates are -- if you have the same
9 concerns, that this is the answers. This is -- it wasn't true.
10 It wasn't true that you're going to lose your pay. It wasn't
11 true that you're going to lose your job. I said do your
12 research. The whole gist of it is do your research and form
13 your own opinion.

14 Q Let's talk about some other things you said in that
15 meeting. You said that it was brought to your attention that
16 the meat plant manager was approached by an organizer, didn't
17 you?

18 A One of the -- they asked the question. So, and I think it
19 was the guy named Frank Sanchez. I'm not sure exactly who it
20 is. They asked the question: Hey. Do you know if the meat
21 plant -- yes, I do. I did that. A meat plant supervisor was
22 approached, yes.

23 Q Thank you. But you didn't tell the employees how you knew
24 that, did you?

25 A I didn't tell the associates how I knew that, no.

1 Q You also told them that you had a good idea of who was
2 organizing in the warehouse, didn't you?

3 A I didn't -- at that point, I knew exactly who was out
4 there. I knew who was doing it. I got a report from the meat
5 plant. Virtually every day somebody would come in and says so
6 and so approached me. So, at that point, I knew exactly who
7 they were.

8 Q And you told the employees that you had a good idea who
9 was organizing, didn't you?

10 A I knew who they were.

11 Q But you never told employees that you had a good idea of
12 who was organizing in the warehouse?

13 A I'm not sure of those exact words, but I knew who they
14 were.

15 Q I'm not asking if you did know. It's good to know that
16 you did. But it -- I'm asking you if you told the employees in
17 this meeting that you had a good idea of who was organizing?

18 A Not sure of those same words, but I did tell them that I
19 knew who they were.

20 Q So --

21 A And it's a question, right? So a question called -- asked
22 is do you know who they are? I says: Yes, I knew who they
23 were.

24 Q But you didn't tell the employees how you knew that,
25 right?

1 A No.

2 Q Didn't you also tell them that as long as they showed an
3 interest, they'd continue to be approached by the Union; is
4 that right?

5 A I don't remember those exact words. But as long as they
6 don't say no to them, they'll continue to approach them. So
7 that's one of the -- what can I do? Well, what you can do is
8 understand your rights. You can say no, and hope that they,
9 you know, don't bother you again.

10 Q Right. So you told them that you're going to keep getting
11 approached unless you tell them no, right? Maybe not those
12 same words, but --

13 A Not in those words, but --

14 Q -- that's what you explained, right? And so, you gave
15 them some advice; isn't that right?

16 A Yes, I gave them some advice to say no. You have the
17 right to say no.

18 Q Right. You told them that they should just tell them no,
19 right?

20 A I told them they had the right to say no. I never told
21 them to say no. In those meetings, I told them exactly. I'm
22 not here to sway one way or the other. I'm here -- that you
23 understand, you know, what your rights are. I even suggested
24 that they go, you know, do their own research.

25 Q So you never said they should tell the organizers that

1 they didn't want to be a part of it; is that right?

2 A No.

3 Q Never said that?

4 A Never said that.

5 Q And --

6 A Never said that they should say no.

7 Q And you didn't continue by saying that they should just
8 raise their hand and say hey, man, this guy is bugging me?

9 A No.

10 Q You never said that?

11 A I never said that.

12 Q Well, let's talk about a few more things that you may or
13 may not have said. You said that they should put their
14 financial affairs on someone else, didn't you?

15 A I don't remember. I don't remember saying that.

16 Q Does that mean you didn't say it?

17 A I don't think I said it, no. I don't believe I said that.
18 The question was your financial affairs are specific to you.

19 Q And so, you told them don't put your financial affairs on
20 anyone else; is that right?

21 A This is what I told them. I told them: Hey, if they come
22 up to you, they can't promise you anything. So to calm some of
23 the associates down that were coming to me -- they were coming
24 to me about hey, they said I'm going to lose my job. They say
25 I'm going to lose my pay. Is it correct that they're going to

1 raise my pay? I'm going to get a raise? I said everything is
2 going to be on the table. My knowledge of a bargaining
3 agreement, if the Union comes in, everything is on the table.

4 Q Did you also tell them that the people who are organizing
5 have an agenda?

6 A They did. I said that. I said that some of these guys
7 probably have an agenda, have an axe to grind with the company.
8 But I told them also that these guys are still part of our
9 team. I mentioned that hey, it's like the drunk uncle.
10 Everybody has got a drunk uncle in their family. At the end of
11 the day, they're family.

12 Q At some point, you played a -- you played them a video
13 about unions, didn't you?

14 A One educational video, yes.

15 Q And after the video, you took some questions from the
16 employees; is that right?

17 A Yes.

18 Q Someone brought up the organizing drive that took place in
19 the warehouse in 1998; isn't that right?

20 A I don't remember that. I don't remember talking about the
21 organizing drive in '88, because the majority of the people
22 there weren't part of it.

23 Q You were there during that time, right?

24 A Yes.

25 Q And someone brought that up during the meeting?

1 A I don't recall bringing it up. I think, if anybody
2 brought it up, it was probably Brian Nicklen, because he was
3 the senior guy that was there. But I don't recall that I
4 brought it up. I didn't recall bringing that up. I didn't
5 have that much knowledge of it. so I didn't bring that up.

6 Q But did one of the employees bring it up in one of their
7 questions?

8 A I'm not sure. Of that I wasn't sure.

9 Q Did you ever respond to a question or a comment about --

10 A I didn't respond to a question of the '88 one, no.

11 Q You never responded to a question like that?

12 A I don't remember. I don't think I did. Like I said, I
13 don't have all the information on that. So I wasn't going to
14 speak on something I didn't know too much about.

15 Q So you never told them, the employees in this meeting,
16 that no one got fired for their union activity back then; is
17 that right?

18 A I don't remember saying nobody got fired. I know that.
19 It might be somebody else. It might be Brian that spoke on it.
20 But I didn't speak on anything as far as the '88 case.

21 JUDGE WEDEKIND: Was it '88 or '98?

22 THE WITNESS: Or --

23 MS. DEMIROK: '98.

24 THE WITNESS: '98, yeah.

25 JUDGE WEDEKIND: Was it '98? When did you start?

1 THE WITNESS: '98, because I started in '97. Yeah.

2 JUDGE WEDEKIND: Okay.

3 Q BY MS. DEMIROK: And so, if you never spoke on it, then
4 you wouldn't have told them that nobody got fired for their
5 union activity back then?

6 A I wouldn't have said that, because I would have known.

7 Q Well, let's just talk a little bit about March 31st.

8 There was a town hall meeting that day, wasn't there?

9 JUDGE WEDEKIND: Were we going to -- I thought we were
10 going to stop at the February 24th meeting.

11 MS. DEMIROK: If you don't mind, Your Honor, if we could
12 just take another five minutes.

13 JUDGE WEDEKIND: Okay, go ahead. March what?

14 MS. DEMIROK: March 31st, 2015.

15 JUDGE WEDEKIND: Okay.

16 Q BY MS. DEMIROK: And you attended a town hall meeting that
17 day, right?

18 A Yes.

19 Q And that meeting was conducted by Mr. Bob Beake; isn't
20 that right?

21 A Mark -- Bob Beake, I believe -- Daniel was there.

22 Q And Mr. Beake did most of the talking, right?

23 A Yes.

24 Q Where was that meeting held?

25 A One of the auditorium rooms.

1 Q About how many employees were there?

2 A It's a full house, 100, 100 or more.

3 Q What was the purpose of this meeting?

4 A It was centered around benefits. I believe it was
5 benefits.

6 Q The state of the company address would you say?

7 A Yes. Yes, I believe so.

8 Q Because you've had those before, right?

9 A We've had those before, yes.

10 Q Were you sitting or standing during the meeting?

11 A I was -- initially, I was sitting, and then I made room
12 for somebody else. Yes. I remember that. I was more focused
13 on we had an interpreter come in.

14 Q Uh-huh.

15 A So I was looking out for her at the time.

16 Q So were you near the front or the back of the auditorium?

17 A Towards the middle until she came and then -- but roughly
18 around the middle, middle part of the --

19 Q And there were other managers present at that meeting,
20 right?

21 A Yes.

22 Q Who were the managers that you saw there?

23 A Jerry Kropman was there. I think Armando Gutierrez was
24 there. Jay Golofante (phonetic). I mean there's a number of
25 -- the town hall meetings, it's management from everywhere,

1 from all departments, not necessarily just the warehouse.

2 Q Okay. And some employees asked questions during the
3 meeting, didn't they?

4 A Yes.

5 Q And this is the meeting where -- in which you referred to
6 when we talked about Mr. Wallace getting fired, right?

7 A This is the meeting Mr. Wallace attended, yes.

8 Q And employees ask questions towards the end of the
9 meeting, right?

10 A Correct.

11 Q Because there was a question and answer session, right?

12 A There's a question and answer. There's questions in
13 between the meeting. So it wasn't -- there were questions in
14 between the meetings, but most of the questions were asked
15 towards the end of the --

16 Q And former employee Thomas Wallace, he asked a couple of
17 questions, didn't he?

18 A Yes.

19 Q And those questions were related to health benefits,
20 right?

21 A Yes.

22 Q And other employees reacted when he asked his first
23 question, didn't they?

24 A Yes, the employees reacted.

25 Q But Mr. Beake answered his questions, didn't he?

1 A He did.

2 Q And Mr. Wallace wasn't the only one who asked questions;
3 is that right?

4 A Mr. Wallace wasn't the only one asking questions.

5 Q Now when you said that he was -- correct me if I get this
6 wrong. But I thought you testified that he was rude and
7 disrespectful during that meeting.

8 A Yes.

9 Q Was it his tone of voice that was rude?

10 A He was -- he would get agitated. Not necessarily
11 disrespect. The disrespect piece is that he stormed out after
12 that. He walked out of the room. That was the -- I think that
13 was the disrespect piece for me. He did continue on after Mr.
14 Beake had continued. So Mr. Wallace kept on -- you know, kept
15 on, you know, with his questions or --

16 Q Well, he asked two questions, didn't he?

17 A I'm not sure of the number of questions, but I know he
18 said -- I know he's continued on after -- after his initial
19 questions, he continued on. And then he got up and stormed
20 out.

21 Q You were there?

22 A I was there. I saw that.

23 Q You saw that?

24 A I saw it, yes. I saw that he walked out. I know that.

25 Q But other people left that meeting early, didn't they?

1 A I don't think so, no.

2 Q But you weren't monitoring the door, were you?

3 A I wasn't monitoring the door, no.

4 Q In fact, you were preoccupied with the interpreter?

5 A No. The interpreter came already. At the beginning of
6 the meeting, the interpreter came. But after that, I was right
7 there in the middle. Questions or answers, you know, towards -
8 - after everything was presented. So, at that time, I was just
9 there. I was --

10 Q And you --

11 A -- present.

12 Q You were in the middle, right?

13 A I was roughly around the middle to the front part.

14 Q Near the front?

15 A Yeah, near the front. The door is -- there's a door in
16 the front. There's a door in the middle and a door in the
17 rear. I was more in between the front and the middle door.

18 Q And he was near the rear, right?

19 A He was not completely to the rear but right adjacent to
20 the door, to the rear door, yes.

21 (Counsel confer)

22 MS. DEMIROK: Okay. Your Honor, I think this would be a
23 good time to stop.

24 JUDGE WEDEKIND: Okay. All right. 9:00?

25 MS. DEMIROK: 9:00.

1 JUDGE WEDEKIND: Okay, thank you. Off the record.

2 (Whereupon, the hearing in the above-entitled matter was
3 recessed at 5:43 p.m. until Friday, September 11, 2015 at 9:00
4 a.m.)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1

C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 28, Case Number

4

28-CA-150157, Shamrock Foods Company and Bakery, Confectionary,

5

Tobacco Workers' and Grain Millers International Union, Local

6

Union No. 232, AFL-CIO-CLC and at the National Labor Relations

7

Board, Region 28, 2600 North Central Avenue, Suite 1400,

8

Phoenix, Arizona 85004, on Wednesday, September 9, 2015, at

9

1:09 p.m. was held according to the record, and that this is

10

the original, complete, and true and accurate transcript that

11

has been compared to the reporting or recording, accomplished

12

at the hearing, that the exhibit files have been checked for

13

completeness and no exhibits received in evidence or in the

14

rejected exhibit files are missing.

15

16

17



18

JENNIFER GEROLD

19

Official Reporter

20

21

22

23

24

25

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 10, 2015

Pages: 197 through 327

Volume: 3

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

SHAMROCK FOODS COMPANY,

and

BAKERY, CONFECTIONERY,
TOBACCO WORKERS' AND GRAIN
MILLERS INTERNATIONAL UNION,
LOCAL UNION NO. 232, AFL-CIO-
CLC

Case No. 28-CA-150157

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004, on **Thursday, September 10, 2015, at 9:02 a.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****SARA DEMIROK, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Tel. 602-640-2126
Fax. 602-640-2178

ELISE F. OVIEDO

NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, NV 89101
Tel. 702-388-6211
Fax. 702-388-6248

On behalf of the Respondent:**TODD A. DAWSON, ESQ.**

BAKER & HOSTELLER, LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Tel. 216-861-7652
Fax. 216-696-0740

NANCY INESTA, ESQ.

BAKER & HOSTELLER, LLP
116011 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Tel. 310-442-8833
Fax. 310-820-8859

On Behalf of the Union:**ALAN G. CROWLEY, ESQ.****DAVID A. ROSENFELD, ESQ.**

WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Ivan Vaivao	207	325			

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

GC-7 (a) and 7 (b)	289	289
GC-8 (a) and 8 (b)	297	297
GC-9 (a) and 9 (b)	303	303
GC-10 (a) and 10 (b)	307	307
GC-11 (a) and 11 (b)	313	313
GC-12 (a) and 12 (b)	319	319
GC-13 (a) and 13 (b)	324	324

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: Okay. This is the third day of hearing
3 in Shamrock Foods Company. We're in the middle of testimony by
4 the General Counsel's first witness, but do we have any
5 preliminary matters you would like to discuss first?

6 MR. DAWSON: Your Honor, we have three. The first was we
7 had issued a subpoena to the Union requesting production of any
8 audio or video recordings in their possession and had asked
9 that it be produced yesterday.

10 Obviously, we're willing to discuss, you know, if they
11 need some additional time, but we were wondering -- I think Mr.
12 Crowley is not going to be here today. We wondered -- you
13 know, wondered if the Union had intended to comply with that or
14 if they were objecting.

15 I guess there's -- with Mr. Crowley not being here, I'm
16 not sure that there's much that we can do immediately, but we
17 did want to bring it to Your Honor's attention.

18 JUDGE WEDEKIND: Did he respond verbally to you yesterday
19 with respect to --

20 MR. DAWSON: He did --

21 JUDGE WEDEKIND: -- whether he had any?

22 MR. DAWSON: -- he did not, Your Honor.

23 JUDGE WEDEKIND: He didn't say one way or another.

24 MR. DAWSON: Correct.

25 JUDGE WEDEKIND: Okay. Well, I understand -- he did

1 mention to me that he was not going to be here today. He
2 didn't know whether Mr. Rosenfeld would be sitting in, but your
3 understanding, General Counsel, is no one from the Charging
4 Party will be here?

5 MS. OVIEDO: That's correct, Your Honor.

6 JUDGE WEDEKIND: Okay.

7 MS. OVIEDO: I believe that Mr. Crowley won't be here
8 until next week.

9 JUDGE WEDEKIND: Okay. Well --

10 MR. DAWSON: I'll contact him.

11 JUDGE WEDEKIND: -- you think he'll be here next year
12 (sic) -- next week?

13 MS. OVIEDO: Yes, I do.

14 JUDGE WEDEKIND: Okay. If you could raise it again,
15 perhaps, when he's here to respond.

16 MR. DAWSON: Thank you, Your Honor. And I may -- I can
17 always contact him via e-mail.

18 JUDGE WEDEKIND: Okay.

19 MR. DAWSON: I just thought he would be here today.

20 JUDGE WEDEKIND: Sure.

21 MR. DAWSON: The -- we had looked again at the formal
22 papers. We had asked in the denials of the petitions to revoke
23 the subpoena duces tecums -- I'm sorry, subpoena ad
24 testificandums to Mr. Beake and Mr. McClelland, that those
25 orders be made part of the record if the petitions were denied.

1 And I don't believe that they're in the formal papers. They
2 may have been part of General Counsel Exhibit 2.

3 MS. DEMIROK: We're going to check on that --

4 MR. DAWSON: Okay.

5 MS. DEMIROK: -- because I think so.

6 MR. DAWSON: I think they -- yeah, that's what I wanted to
7 check. It just occurred to me as I was reading it, but I
8 wanted to raise that. And then --

9 JUDGE WEDEKIND: Well, as far as -- before you go on, as
10 far as I know it's not part of GC 2, just the order.

11 MS. DEMIROK: I --

12 JUDGE WEDEKIND: Well --

13 MS. DEMIROK: -- oh, I'm sorry, I misunderstood. I
14 thought they were requesting that the denial, meaning the
15 order.

16 JUDGE WEDEKIND: I thought you wanted the --

17 MR. DAWSON: The petitions as well.

18 JUDGE WEDEKIND: -- you want the petitions as well.

19 MS. DEMIROK: You want the petitions as well.

20 MR. DAWSON: Yeah, correct.

21 JUDGE WEDEKIND: The underlying petitions.

22 MR. DAWSON: If we could, yeah.

23 MS. DEMIROK: General Counsel wouldn't mind doing a joint
24 exhibit --

25 JUDGE WEDEKIND: Okay.

1 MS. DEMIROK: -- with those.

2 JUDGE WEDEKIND: Okay. Well, let's do that then.

3 MR. DAWSON: That's fine.

4 MS. DEMIROK: But we would also want to include the
5 subpoena that was issued, both the subpoena duces tecum and
6 both of those subpoenas ad testificandum.

7 JUDGE WEDEKIND: You want to put in your response as well?

8 MS. OVIEDO: May as well.

9 JUDGE WEDEKIND: You might as well just complete the
10 record. Okay.

11 MR. DAWSON: I believe, and I may be wrong, but I believe
12 the subpoenas were Exhibit A to both of the petitions.

13 MS. DEMIROK: You're -- that's correct.

14 MR. DAWSON: I have, you know, no objection, obviously, to
15 putting the additional material in.

16 And then, finally, in regard to the sanctions that Your
17 Honor awarded yesterday, we were wondering if we will be
18 permitted to do an offer of proof in regard to cross and
19 direct? It would -- you know, and with all -- with absolutely
20 all due respect, we are intending to file requests for special
21 permission to appeal.

22 In the event that it is granted or in the event that our
23 exceptions are granted, we thought it might be more efficient
24 to have the testimony in the record to be considered, but we
25 wanted to, obviously, check with Your Honor before attempting

1 to do that.

2 JUDGE WEDEKIND: First of all, a lot of it, I think, would
3 be premature to put in at this point since the GC hasn't put on
4 its case.

5 MR. DAWSON: That's --

6 JUDGE WEDEKIND: I'd be inclined not to burden the record
7 at this point.

8 MR. DAWSON: -- okay.

9 JUDGE WEDEKIND: At some point, perhaps you can do it, but
10 certainly you have a right to make an offer of proof on your
11 special.

12 MR. DAWSON: And that's -- you know, we didn't want to --

13 JUDGE WEDEKIND: You can do it there.

14 MR. DAWSON: -- we didn't want to --

15 JUDGE WEDEKIND: I mean you could do it there. Sure.

16 MR. DAWSON: -- be disrespectful in terms of trying to --

17 JUDGE WEDEKIND: No, you have every right to file an
18 appeal. And I always like to find out whether the Board
19 reasonably or not, sooner rather than later. So that's fine.

20 MR. DAWSON: They typically don't agree with me, so.

21 JUDGE WEDEKIND: But, you know, you can make your offer of
22 proof --

23 MR. DAWSON: Right.

24 JUDGE WEDEKIND: -- with your special appeal and later
25 with respect to each document, if you want to make an offer of

1 proof, just ask me.

2 MR. DAWSON: It would be more in the nature of testimony.

3 JUDGE WEDEKIND: Okay. That's fine.

4 MR. DAWSON: So, we can --

5 JUDGE WEDEKIND: Okay.

6 MR. DAWSON: -- thank you, Your Honor.

7 JUDGE WEDEKIND: We can deal with it later.

8 MR. DAWSON: That's all. Those are the preliminary
9 matters.

10 JUDGE WEDEKIND: Okay. On the subpoena ad testificandums,
11 I suggest making it 2(a), (b), (c), (d). Just keep them all
12 together. Is that okay?

13 MS. DEMIROK: That's fine.

14 JUDGE WEDEKIND: So it would be GC 2(a), (b), (c), (d).

15 MS. DEMIROK: We may have to start at GC -- I think we're
16 at 7 right now.

17 MS. OVIEDO: Oh, I understand what you mean.

18 JUDGE WEDEKIND: Yeah, just keep it together.

19 MS. DEMIROK: Yeah, add it to the other one.

20 JUDGE WEDEKIND: Keep them together, yeah.

21 MR. DAWSON: So the order will become 2(a) as opposed to
22 2, correct?

23 JUDGE WEDEKIND: Right. So don't -- it's already 2.

24 MR. DAWSON: Yeah, she -- yeah.

25 JUDGE WEDEKIND: Yeah. Okay. Anything from the General

1 Counsel side?

2 MS. DEMIROK: Nothing from our side.

3 JUDGE WEDEKIND: Okay. Do you recall Mister --

4 MS. DEMIROK: Mr. Ivan Vaivao.

5 JUDGE WEDEKIND: -- Vaivao. Thank you. I forgot how to
6 pronounce it.

7 THE WITNESS: How's your drive been?

8 JUDGE WEDEKIND: What's that?

9 THE WITNESS: How's your drive been?

10 JUDGE WEDEKIND: I didn't get shot.

11 MR. DAWSON: Oh, yeah, you saw that too.

12 JUDGE WEDEKIND: Yeah, I mean there's at least five signs.

13 MS. OVIEDO: You drove up from Tucson?

14 JUDGE WEDEKIND: No, no. I did take I-10.

15 MS. OVIEDO: Oh, okay.

16 JUDGE WEDEKIND: Yeah. So, in any event, welcome back.
17 You're still under oath.

18 THE WITNESS: Very good.

19 JUDGE WEDEKIND: Okay.

20 Whereupon,

21 **IVAN VAIVAO**

22 having been previously sworn, was called as a witness herein
23 and was examined and testified as follows:

24 **DIRECT EXAMINATION**

25 Q BY MS. DEMIROK: Good morning, Mr. Vaivao.

1 A good morning.

2 Q Since you were --

3 THE COURT REPORTER: Are you on direct?

4 MS. DEMIROK: -- this is on direct.

5 THE COURT REPORTER: Okay.

6 Q BY MS. DEMIROK: Since you were here yesterday, have you
7 reviewed any documents in preparation for your testimony?

8 A No.

9 Q And have you spoken with anyone in preparation for your
10 testimony?

11 A No.

12 Q So I think where we left off yesterday, we had talked
13 about the meeting on March 31st, the town hall meeting.

14 A I believe so.

15 Q I want to go back to March 26th. So it was just a few
16 days prior to that. Mr. Vaivao, you held another meeting on
17 that day; didn't you?

18 A I don't know. I don't know the date, but I'm pretty sure
19 we did, yes.

20 Q And James Allen conducted this meeting with you; didn't
21 he?

22 A Yes.

23 Q And James Allen works in the HR Department, right?

24 A Yes.

25 Q And he was fairly new at that point; wasn't he?

1 A He was fairly new, yes.

2 Q And, again, you talked about Unions in this meeting;
3 didn't you?

4 A I don't believe I did, but if the issue came up we may
5 have -- we mentioned something, but I don't think we did.
6 Those meetings, as well, were James Allen's meeting. I'm the
7 one that sat in.

8 Q So would you consider this a roundtable meeting or a
9 communications meeting?

10 A It was a communications meeting as well.

11 Q But the general purpose was for HR to talk about issues in
12 the warehouse?

13 A The general purpose is to follow-up, you know, find out
14 any feedback from the sources.

15 Q But the issue of Unions did come up; didn't it?

16 A I don't believe it did. The James Allen meeting -- I'll
17 tell you what I remember from that meeting. I remember an
18 associate -- there was an outburst. His name was Eric -- Eric
19 Diaz. There was an outburst from Eric Diaz.

20 So from that meeting, I said, this is perfect, Eric. HR
21 is here, you welcome to take it over to HR, and then -- and he
22 did. He took his issues to HR. And, essentially -- you know,
23 it's confidential -- from that meeting we saved that kid's
24 life.

25 Q What was his issue?

1 MR. DAWSON: Objection, Your Honor, to the extent that
2 it's -- this is potentially a HIPAA protected issue, because it
3 is a medical issue. We don't feel that it's appropriate other
4 than to ask whether or not it was involving the Union.

5 JUDGE WEDEKIND: What's the relevance of it?

6 MS. DEMIROK: Well, the meeting is, apparently, about
7 raising employee issues, and he offered some testimony
8 regarding this particular individual having an issue, and I
9 just wanted to know what that issue was.

10 JUDGE WEDEKIND: Do we have -- we do have the name of the
11 person already in the record, right?

12 MS. DEMIROK: Yes, we do.

13 JUDGE WEDEKIND: Okay. And are you saying it saved this
14 individual's life or someone else's life?

15 THE WITNESS: This individual's life.

16 JUDGE WEDEKIND: This individual's life.

17 Q BY MS. DEMIROK: Was it related to the warehouse?

18 JUDGE WEDEKIND: I'm going to allow some testimony,
19 because he already offered it. Let's try not to get in too
20 much detail, I guess.

21 MS. DEMIROK: Of course.

22 JUDGE WEDEKIND: Okay.

23 MS. DEMIROK: Thank you, Your Honor.

24 JUDGE WEDEKIND: Proceed.

25 Q BY MS. DEMIROK: Was the issue related to the warehouse?

1 A This is related to the warehouse. It was more general,
2 but it was -- he was very vocal about it, but all general
3 issues. So I said, hey, if you have more issues, HR is here.
4 You're welcome to take it over to HR, which he did. He went to
5 HR. And like I said, with that we found out that he had more
6 issues.

7 JUDGE WEDEKIND: He raised this issue in an open meeting
8 with other employees?

9 THE WITNESS: He raised the warehouse issue in a meeting
10 with the employees.

11 MR. DAWSON: Your Honor, if I may clarify my objection.
12 It's not to the issue that was raised, it was to the issue that
13 he turned out to have afterward, if that makes sense. The
14 issues themselves were not medical, but --

15 JUDGE WEDEKIND: Oh.

16 MR. DAWSON: -- upon further investigation, it turned into
17 a medical issue.

18 JUDGE WEDEKIND: But you're only asking about the issues
19 he raised at the meeting, right?

20 MS. DEMIROK: That's correct.

21 MR. DAWSON: Right.

22 JUDGE WEDEKIND: Okay. All right. So we don't see --

23 MR. DAWSON: And that's --

24 JUDGE WEDEKIND: -- a problem with that.

25 MR. DAWSON: -- yeah, that was the only --

1 JUDGE WEDEKIND: Okay.

2 MR. DAWSON: -- objection.

3 JUDGE WEDEKIND: But try to limit your answers to that.

4 Don't offer anything unless asked. Okay.

5 Q BY MS. DEMIROK: Now, you said Eric Diaz had an outburst
6 during this meeting; is that right?

7 A Yeah.

8 Q Was he disciplined at all for the outburst?

9 A Yeah.

10 Q Now, regarding this meeting on March 26, you decided to
11 have this meeting, because employees were -- they were still
12 approaching you with concerns; weren't they?

13 A No, this is an HR meeting. This was -- anything involving
14 HR, it was an HR meeting, and I'm there to facilitate any
15 issues with the warehouse.

16 Q So you didn't tell the employees that you were having this
17 meeting, because people -- employees were still approaching
18 you?

19 A Not at this meeting, no.

20 Q So you didn't tell them that employees were coming to you
21 with concerns about the financial impact the Union would have
22 on them?

23 A Not on this meeting. Not that I recall at this meeting.

24 Q So then you probably didn't say that some of these
25 employees with concerns were even considering filing a

1 harassment claim?

2 A Not at this meeting. The meeting with Eric Diaz that
3 you're referring to with James Allen, I remember that, because
4 of Eric Diaz. So that meeting was specifically to that, but I
5 was there to facilitate any issues -- warehouse issues, but I
6 don't remember -- I don't believe we discussed any issues other
7 than that. It was more specific to their job, their work area.

8 MR. DAWSON: Your Honor, can we take a brief -- just a
9 brief recess?

10 JUDGE WEDEKIND: Sure. Sure. Off the record.

11 (Off the record at 9:16 a.m.)

12 JUDGE WEDEKIND: All right. Let's go back on the record.

13 Q BY MS. DEMIROK: Okay. So we were talking about the March
14 26th meeting, and I just want to be clear. You know, at any
15 time during this meeting -- you said you didn't -- you didn't
16 tell the employees that other employees were coming to you with
17 concerns and considering filing a harassment complaint?

18 A No, I don't believe so, but if it did, at this point -- at
19 this point of the -- this time frame, it wasn't unusual that
20 employees were coming to me every day --

21 Q Because they were --

22 A -- complaining about -- these guys are approaching us,
23 they're harassing us. There's an associate that came to me
24 right after somebody handed them a card and reported to me. So
25 it wasn't -- it was odd -- it was almost instantaneously when

1 something happened that there's a knock at my door that says,
2 hey, these guys are approaching me again.

3 Q Because they didn't want to be approached, right?

4 A They didn't want to be approached.

5 Q And they were worried about the financial impact the Union
6 would have on them?

7 A They were worried about their jobs. They were worried
8 about what they did know.

9 Q In fact, one of these employees came to you, and he was
10 concerned, because his wife was pregnant, right?

11 A Yes.

12 Q And you talked about that during this March 26th meeting;
13 didn't you?

14 A I probably did, if it came up.

15 Q And another employee came to you with concerns, because he
16 had to take care of father-in-law; is that right?

17 A I don't recall that one.

18 Q Maybe his mother-in-law; could that be?

19 A I don't -- I don't recall that one either.

20 Q At this meeting, did you tell the employees that another
21 employee came to you with concerns about having to take care of
22 his in-laws?

23 A No, I don't recall that. I don't recall saying that.

24 Q When you say you don't recall, does that mean you didn't
25 say that?

1 A I -- it's not a -- I don't remember saying that.

2 Q Well, let's go through some of the other things you said
3 at the meeting. You told the employees that the people how are
4 organizing at Shamrock were Shamrock associates, right?

5 A Say that again.

6 Q You told the employees in the meeting that the ones who
7 were organizing were Shamrock associates?

8 A I knew who they were. I knew exactly who they were,
9 because associates were coming to me. So the question was do
10 you know who they are? I said, yes, I do. I know who they
11 are.

12 Q And you told them that they were Shamrock associates; is
13 that right?

14 A I probably did, but they all knew who they were. Majority
15 of these guys knew who they were. And at this time -- I think
16 it wasn't a secret at this time. I think everybody --
17 everybody at this time knew who they were. It was the
18 associate that we met that are not in the day-to-day. Those
19 are the associates that they were asking.

20 JUDGE WEDEKIND: What do you mean they are not in the day-
21 to-day?

22 THE WITNESS: Not a day-to-day. The maintenance teams
23 that were there. I was very -- I was very careful with the
24 maintenance. One of the gentleman's name is Luke Hauptman. I
25 said, hey, tell me who they are. Tell me who they are, but the

1 climate -- I understood the climate was that there was a lot of
2 frustration going on, so I didn't want anything to happen. I
3 knew exactly -- I didn't want to tell them who they were, but
4 there was a call out for can you tell me who they are?

5 So I knew that, but the maintenance guys they don't
6 work -- they work alongside, but they're not every day with
7 each other. So I knew the climate was flammable.

8 Q BY MS. DEMIROK: But at this meeting on March 26th, they
9 didn't ask you who they were at that meeting; did they?

10 A They most likely did.

11 Q And you didn't tell them who they were; did you?

12 A I didn't tell them who they were.

13 Q You just said you knew that they were Shamrock associates,
14 right?

15 A I told them that, you know, they were part of our team.

16 Q And you also told them that these associates were
17 disgruntled for one reason or another; isn't that right?

18 A These associates had issues. Everybody had some sort of
19 issue.

20 Q And you told the employees in the meeting this, right?

21 A They asked what the main complaint is. I said, well,
22 everybody has issues.

23 Q And then you said you -- that the organizers that you knew
24 of, they had personal agendas; isn't that right?

25 A Not in those words. I didn't say that. I said that

1 associates had issues, like the people that are organizing,
2 they had issues.

3 Q So you never said they had personal agendas.

4 A I don't recall saying that.

5 Q Does that mean you didn't say that?

6 A What I did say is that they had issues. Everybody had
7 issues specific to themselves, some more than others. So they
8 do. They do have issues is the reason why. Do I know specific
9 to what they were mad about, no.

10 Q So you said that you knew who they were, right?

11 A Yes, I knew who they were --

12 Q And you --

13 A -- because associates were coming to me and telling me who
14 they were.

15 Q -- and you said that you knew that they had issues, right,
16 because you just said that?

17 A Yes.

18 Q So you didn't tell the employees how you knew that, right?

19 A I didn't tell the associates anything about -- I knew they
20 had issues. What they were, I didn't know what those specific
21 issues were, but you don't -- not organize, because you don't
22 feel one way or the other for the company.

23 Q You also said you knew they were conducting meetings;
24 didn't you?

25 A I knew they were conducting meetings, because the

1 associates came up and told me as well. Did I know -- was I
2 there, no. Did I ask, no. Associates brought this up.

3 Q But at this meeting on March 26th, you told the employees
4 that you knew they were conducting meetings, right?

5 A On the question. So here's -- they asked, do you know
6 there was meetings out there. I said, well, since you know,
7 why can't you do anything to stop it. So that's how I --

8 Q So you're that at this meeting --

9 MR. DAWSON: Objection. He wasn't finished with his
10 answer.

11 JUDGE WEDEKIND: Were you finished?

12 THE WITNESS: So the frustration was their -- the
13 associate was like, well, do you know if -- do you know that
14 there was meetings. I said, yes. The associates brought it
15 up, but what did they say -- what they were saying -- what they
16 were saying is that -- the associates, they were telling me
17 that there was meetings.

18 So I knew there was meetings going on, because the
19 associates brought it up. If you -- if now that you know that
20 there was meetings, why can't you do anything to stop it. Why
21 can't you do anything to stop the organization? And what I
22 said, is that they have all the right. They have all the right
23 to organize. They have all the right to organize before and
24 after break, during their lunches, and in their own time.

25 Q BY MS. DEMIROK: So it's your testimony today that at the

1 March 26th meeting, they told you that organizers were having
2 meetings; is that right?

3 A I don't remember -- but in these meetings they were
4 brought up, right. So in the meeting -- every meeting that I
5 had, somebody would raise the question, do you know that there
6 is meetings out there. I said, yes.

7 Q So I'm not --

8 A So now that you know --

9 Q -- excuse me, but I'm not asking you how you knew there
10 were meetings. I am asking you about what you said during this
11 meeting on March 26th.

12 So I just want to be very clear about what you testified
13 about, because my original question was you said that you knew
14 that they were conducting meetings; didn't you?

15 A It's not a yes or no -- it's not a yes or no question. It
16 would be misleading for me to say, yes, I knew.

17 Q I'm not asking you if you knew. I'm just asking you if
18 you said you knew. So did you say you knew that they were
19 conducting meetings at this meeting?

20 A Like I said, it would be misleading for me to say, yes, I
21 said that, because the reason why I said that was because
22 associates came up to me. They were asking. So I said, yes, I
23 knew, because the associates were asking or were telling me.

24 JUDGE WEDEKIND: Here's a suggestion. This often comes up
25 in this hearing, you're no different. What I suggest you do,

1 just to save time, because we could be here for a third week
2 the way this is going, is answer the question that was asked.

3 THE WITNESS: Okay.

4 JUDGE WEDEKIND: And if you want to explain your answer,
5 do that -- you can offer your explanation afterwards.

6 THE WITNESS: Okay.

7 JUDGE WEDEKIND: Another thing to realize is that there's
8 another side in this room, not just the General Counsel's side,
9 and they're going to have an opportunity to either examine you
10 now or later, and they can bring out some of the points that
11 perhaps you want to make. But right now, the General Counsel
12 has the right to ask you questions and it's your obligation to
13 answer truthfully the question asked. Okay. Try it that way.

14 THE WITNESS: Sure.

15 JUDGE WEDEKIND: See how it works.

16 THE WITNESS: I will.

17 Q BY MS. DEMIROK: Well, let's start back where we left off.
18 You said that you knew that they were conducting meetings. And
19 you said --

20 A Yes, I knew.

21 Q Okay. You also said that you knew those meetings were
22 offsite; didn't you?

23 A Yes, ma'am. Because the associates told me.

24 Q But they didn't tell you this during the March 26 meeting;
25 did they?

1 A I'm not sure, but it came up. Whenever there's a
2 question, I don't ask, do you guys know there's meetings out
3 there. It comes up.

4 Q And when you told them you knew they were conducting
5 meetings, you didn't tell the associates who were attending
6 this March 26 meeting how you know that; did you?

7 A I did.

8 Q You did.

9 A Every time I tell them, it's because associates came to
10 me.

11 Q And you didn't tell them what associates came to you; did
12 you?

13 A I didn't tell them who came to me.

14 Q You didn't tell them at all?

15 A (No verbal response).

16 Q At one point you even said that you knew that there was a
17 meeting a couple weeks ago; didn't you?

18 A Not that specific. I don't know the specific dates when
19 they have meetings. It was more that hey, they had a meeting
20 offsite. I wouldn't know that, that they had a meeting a
21 couple weeks ago.

22 Q And if you didn't know that, you wouldn't have said that;
23 did you?

24 A I wouldn't have said that they had meetings two weeks ago.

25 Q So you never said that?

1 A I never said that. Not two weeks ago.

2 Q You also said that you knew who went to those meetings; is
3 that right?

4 A I knew the person -- whoever told me that there was a
5 meeting out there, that they went out there, that's who I knew.
6 Did I know everybody that was there at that meeting? No.

7 JUDGE WEDEKIND: That's another example. She asked you if
8 you said it. Not whether you knew it, right?

9 MS. DEMIROK: That's correct.

10 JUDGE WEDEKIND: So try to answer that question and then
11 you can try to explain it.

12 THE WITNESS: Okay. Yes, I knew some of the people that
13 were there.

14 JUDGE WEDEKIND: Did you say you knew?

15 THE WITNESS: Did I say I knew? Yes.

16 Q BY MS. DEMIROK: And you said you knew everything that was
17 going on; didn't you?

18 A I wouldn't say that. I wouldn't know everything that was
19 going on, no.

20 Q So you never said you knew everything?

21 A I never said I knew everything.

22 Q And just going back a little bit, when you said you -- you
23 told them that you knew who went to the meetings, you didn't
24 tell them how you knew that, right?

25 A I told them I knew who went to the meetings because

1 associates came to me.

2 Q But again, you didn't tell them what associates told you
3 that; did you?

4 A I didn't tell them which associates told me that, no.

5 Q So just a couple more things on this meeting. You told the
6 employees towards the end of the meeting that you knew exactly
7 who the organizers were; didn't you?

8 A I wouldn't say those exact words. I would say that I knew
9 who they were. Because associates were telling me who they
10 were. It wasn't a secret.

11 Q And then you reminded them that you were out there and
12 vigilant; didn't you?

13 A That I didn't say.

14 Q Now going back to the whole purpose of those meetings,
15 which was you testified that HR conducted this meeting to talk
16 about some issues in the warehouse, right?

17 A Right.

18 Q And someone -- one of the employees brought up layoffs;
19 didn't they?

20 A One of those meetings with HR, yeah. The one with James
21 Allen, I don't believe that one. The reason why I know the one
22 with James Allen, because of Eric, Eric was there. And then
23 Eric went with James Allen. One of those meetings that Tom
24 Wallace attended, he asked about the layoffs, yes. So if it
25 was the same meeting, I don't remember if it was the same

1 meeting. Not, I don't think so.

2 Q James Allen wasn't -- didn't conduct all of the meetings
3 with you; did he?

4 A No.

5 JUDGE WEDEKIND: I'm not sure I understood that question.
6 So was the question -- could you rephrase that question?

7 Q BY MS. DEMIROK: Was James Allen present at every meeting
8 that you held with employees?

9 A No.

10 Q And the fact that he was at this one is why it sticks out
11 in your mind, right?

12 A No, the fact that it sticks out is because of Eric Diaz.

13 Q And it was on March 26, 2015, right?

14 A I don't recall the dates. What I do know is the one that
15 James Allen was at, is the one with Eric Diaz because we
16 provided help. Provided him with some help.

17 Q Now, Mr. Vaivao, I want to draw your attention to --

18 MS. DEMIROK: Actually, Your Honor, could we go off the
19 record for just a moment?

20 JUDGE WEDEKIND: Sure, off the record.

21 (Off the record at 9:40 a.m.)

22 Q BY MS. DEMIROK: I want to talk about another meeting that
23 you attended and this meeting was on April 29th, 2015. Do you
24 recall that meeting?

25 A Recall the dates? No. You recall who was present?

1 Q Let me see. Mr. Brian Nicklen was there. Mr. Jerry
2 Kropman was there and Mr. Mark Engdahl was there. Do you
3 recall that meeting?

4 A I recall that meeting, yeah.

5 Q Now Mark Engdahl began conducting this meeting; didn't he?

6 A Yes.

7 MR. DAWSON: Your Honor, can we just have the date again
8 on the meeting?

9 MS. DEMIROK: April 29th, 2015.

10 MR. DAWSON: April 29th.

11 Q BY MS. DEMIROK: And at the beginning of this meeting,
12 well let's go back a little bit. There were how many employees
13 at this meeting?

14 A No more than ten. I mean these meetings were -- the room
15 holds no more than ten, probably eight to ten associates there.

16 Q Do you recall which employees attended this meeting?

17 A I wouldn't remember -- don't remember any specific.

18 Q But they were more tenured employees; weren't they? They
19 had been around for a while, right?

20 A First shift, if Mark was there, it would be the first
21 shift which majority of the tenured associates were there, yes.

22 Q And where was this meeting conducted?

23 A I believe it was one of the conference rooms.

24 Q So Mr. Engdahl opened up the meeting by telling the
25 employees that he owed everybody some follow-up; is that right?

1 A I don't recall exactly what he said. I don't remember
2 what he said to open up. When Mark Engdahl, he's my boss'
3 boss, when he's there, he's pretty much addressing. So when
4 Mark is present, the majority of the times, I don't -- we don't
5 say anything. I don't say anything. I'm not -- I'm just there
6 in support.

7 Q Because it's kind of a big deal when he's there, right?

8 A When he's there. He has an office there. So when he's
9 there, he does attend some of the meetings.

10 Q And at the beginning of the meeting, the employees were
11 given a piece of paper; weren't they?

12 A I believe it was some communication paper, yes.

13 Q And that document addressed an issue that employees were
14 raising; didn't it?

15 MR. DAWSON: Objection, Your Honor, the document speaks
16 for itself and would be the best evidence of its content.

17 MS. DEMIROK: Well, Your Honor, we subpoenaed this -- this
18 would be responsive to our subpoena and we did not receive the
19 subpoena -- this document in the subpoena documents.

20 MR. DAWSON: If they have -- I mean it appears that they
21 know what's in the document because they're asking about it.
22 To the extent that they don't have it, they don't have it. But
23 you know, our objection would still be there.

24 MS. DEMIROK: And for the record --

25 JUDGE WEDEKIND: You want to introduce it?

1 MS. DEMIROK: I've never seen this document.

2 JUDGE WEDEKIND: Okay, overruled. You want to repeat the
3 question?

4 Q BY MS. DEMIROK: So the document addressed an issue that
5 was being raised by employees; is that right?

6 A The document, one of -- it's layoffs. All right. They
7 mentioned layoffs in there. So I know that was in there. But
8 yeah, there was some communication going back to the
9 associates.

10 Q Because this was -- this meeting was in April, right?

11 A I'm not sure exactly the dates, yeah.

12 Q But it was after you had your meetings in February; is
13 that right?

14 A Yes, it would be.

15 Q And it was after the meetings you held in March, right?

16 A That would be.

17 Q And during those meetings, employees would raise those
18 issues, one of them being layoffs?

19 A One of the meetings, one for the associates did. But the
20 layoffs didn't pertain to everybody. Layoff pertained to
21 different part of the warehouse. So it didn't pertain to
22 everybody. So whoever was there, that was his specific issue.

23 Q And in fact, the layoffs didn't really pertain to the
24 employees that were at this April 29th meeting; did it?

25 A There were some that were there, yes. There were some

1 that were there that it pertained to. It wasn't a specific
2 group. It was -- at that time, inbound were in, outbounds was
3 in. So it's a mixture of everybody who was there. It wasn't a
4 targeted group, no.

5 Q But more tenured employees would be less likely to be laid
6 off, right?

7 MR. DAWSON: Objection. That calls for speculation. It
8 would depend on the size of the layoff.

9 JUDGE WEDEKIND: Well, I'm not sure -- do you have any
10 personal knowledge?

11 THE WITNESS: I don't have any personal knowledge. Can
12 you repeat the question?

13 Q BY MS. DEMIROK: More tenured employees would be less
14 likely to be laid off; is that right?

15 A It depends. It depends on the area, it depends what --
16 yes, the more tenured employees would be I guess safe.

17 JUDGE WEDEKIND: And you have personal knowledge of that?

18 THE WITNESS: I don't have personal knowledge of that, no.

19 JUDGE WEDEKIND: What's the basis of your testimony that
20 you just gave?

21 THE WITNESS: I guess I don't understand the question,
22 Your Honor.

23 Q BY MS. DEMIROK: Have you ever -- have there ever been
24 layoffs when you worked at Shamrock?

25 A Yes.

1 Q In fact, there were layoffs not this summer, but the
2 summer prior; is that right?

3 A Yes.

4 Q And approximately how many employees were laid off at that
5 time?

6 A About 35.

7 Q And of those 35, those were not more -- let me rephrase
8 that. Of those 35 employees, were they closer to the bottom of
9 the totem pole?

10 A There were the least senior, yes.

11 Q Okay. And so the employees that were at this meeting on
12 April 29th, they were more senior, right?

13 A Not all of them. They were -- like I said, there was a
14 mixture of everybody that was there. Not all of them, no.

15 Q But Mark even told the employees at this meeting that when
16 he handed them the piece of the paper, that it didn't really
17 pertain to them, right?

18 A There was a lot of communication on there. So it wasn't
19 -- he just went down the line of all the communications that
20 was on that document. Whether it pertained to you or not.
21 There was discussions of new schedules. How the 24 hour
22 operation was going. But there was nothing -- some for the
23 employees that were there, it didn't pertain to them.

24 Q So Mark directly addressed the layoff from last summer;
25 didn't he?

1 A He, like I said, he went down the line of every topic that
2 was on that communication document.

3 Q Including layoffs, right?

4 A Including layoff.

5 Q And he explained that Shamrock did some things last year
6 that weren't handled correctly; isn't that right?

7 A I don't think he said that. I don't know he said that.

8 Q He didn't say that?

9 A I don't think he said that -- I don't think he said
10 Shamrock handled anything incorrectly because I don't think we
11 did anything incorrectly. There was certain things that we
12 could have done better, yes.

13 Q And he told them that they -- Shamrock was committed to
14 doing things better this year, right?

15 A Probably. I'm not sure exactly those words. But we're
16 always committed to improvements. We're always committed to,
17 you know, making it better.

18 Q In fact, Shamrock was so committed, that they put it in
19 writing, didn't they?

20 MR. DAWSON: Objection. The witness hasn't testified that
21 he prepared the document or that he had anything to do with it.
22 So his personal knowledge of why what was included, I think
23 hasn't been established. There's no foundation for the
24 question.

25 JUDGE WEDEKIND: Overruled. Overruled. He would know --

1 if he knows what was put in writing, that's all that -- that's
2 enough for me. Do you know whether it was put in writing?

3 THE WITNESS: Not all -- not everything was there that was
4 put in writing. I knew some of the points that were there in
5 the writing.

6 JUDGE WEDEKIND: Want to follow up on that?

7 THE WITNESS: I don't remember.

8 Q BY MS. DEMIROK: So regarding the layoff, Shamrock wanted
9 to do it better this summer, right?

10 A We did some things operationally different this summer
11 which we didn't have a layoff.

12 Q You didn't have a layoff, right?

13 A We didn't have a layoff this summer.

14 Q And in this document, it told employees that there would
15 be no layoff, right?

16 A I'm not sure if they told employees there was not going to
17 be a layoff. I think -- yeah, I don't remember what's on the
18 document. But the communication is that we're doing things
19 operationally much better. That we don't think it's going to
20 be a layoff. So we'd plan -- and that was my big part. My big
21 part was planning. I did the planning to make sure that we
22 didn't have a layoff. We geared up for this year not to have a
23 layoff.

24 Q Because employees were really concerned about the layoff
25 that happened the prior year, right?

1 A Not necessarily the employees that were there, they
2 weren't concerned about the layoffs for themselves. They were
3 concerned about the schedule. There's two things. There was a
4 layoff and there was a consolidation of schedules.

5 Q But in general, employees were concerned about the
6 layoffs?

7 A They were concerned because yes, there's going to be a
8 layoff and what's going to happen out of those layoffs is a
9 consolidated schedule which means that their schedule will
10 change.

11 Q So Shamrock wanted to avoid the layoffs, right?

12 A Yes.

13 Q And they were committed to avoid the layoff, right?

14 A I say committed. We made sure that operationally that's
15 what we did to help avoid any kind of layoffs.

16 Q So Mark Engdahl never said in this meeting on April 29th
17 that we're so committed to the point where we put it in writing
18 now?

19 A I don't remember him saying that. I don't remember Mark
20 saying that.

21 Q So committed in fact, that we will not do these things.

22 Did he say that?

23 A I don't remember him saying that either.

24 Q Does that mean he didn't say it?

25 A I don't know he said that in those words. I don't know he

1 said that. The gist of everything that Mark was trying to
2 communicate was that hey, we're doing things better to avoid a
3 layoff. We're doing some things different. That was the gist.
4 It was a communication to the employees for them to understand
5 that hey, the question in one of those meetings from an
6 associate, what is you guy's plan? Are we going to do the same
7 thing this year we did last year? He says no, we're not going
8 to do the same things. We took some learnings from last year
9 and we're going to do things better this year, which the result
10 was we didn't do any layoffs. We did some things with sales
11 and moved things around. But we didn't have any layoffs this
12 year.

13 Q And he put that in writing; didn't he?

14 A Whatever was in that document, yes. But it was
15 essentially to tell associates that we're going to do things
16 better to avoid layoffs. And I don't remember the document.
17 That I don't remember. I remember there is a document. I
18 don't remember reading the document. I remember, you know,
19 everybody receiving a copy of it. But the, you know, repeat
20 the document by word, I don't remember what was on there. But
21 I do know what the communication was. The communication is to
22 make sure that hey, we did some things different this year.
23 We're going to do some things different this year to avoid
24 layoffs.

25 Q Right and Mark Engdahl guaranteed that there wouldn't be

1 any layoffs; is that right?

2 A I'm not sure he guaranteed. I don't think he can
3 guarantee that because our business is cyclical. If he did,
4 that's -- but I don't remember him saying that and I don't
5 think he would have said that. Because our business is so
6 cyclical, you wouldn't know.

7 Q And so --

8 A School district goes out, you know, we lose a school
9 district, you can't avoid that. You can't guarantee that.

10 Q And so if he couldn't guarantee that, he would have never
11 said to the employees that they could take it to the bank; is
12 that right?

13 A I don't remember him saying that either. That sounds to
14 me like a guarantee.

15 Q It does, right?

16 A But that's not what he said. I don't remember him saying
17 that. I don't think he said that. He can't possibly say that.

18 Q So he didn't say that?

19 A I don't think he said that. If you're asking me if I knew
20 if he said that, I don't know if he said that.

21 Q And after he handed out the piece of paper to the
22 employees, that's when he said he wanted to have a discussion
23 on what's going on here with the Union organizing, right?

24 A I'm pretty sure questions came up. But I'm not sure -- I
25 don't recall. I really don't recall. To be honest with you,

1 I'll just testify, to the best of my knowledge of what I
2 remember, what I know for that meeting. But that meeting was
3 conducted -- I mean I didn't say very much in those meetings.
4 I probably didn't even say anything.

5 Q But the Union organizing campaign came up, right?

6 A There was no Union organizing campaign. We've never had a
7 unionizing campaign of organizing, no. We're just educating --
8 every meeting that we have, we're educating our associates
9 about their rights. It was not a campaign that went on. We
10 weren't campaigning.

11 Q But you knew that the employees were campaigning for a
12 Union, right?

13 A We knew they're -- because yeah, because Steve Phipps told
14 me. He told us in one of his meetings, he stood up and told
15 me. So yes, that was knowledge and he was out there
16 campaigning in the open. We weren't campaigning. At this
17 point, we didn't do anything. We were educating associates on
18 their rights. There was a lot of employees concerns --

19 JUDGE WEDEKIND: Let me interrupt you again. You know, it
20 was a verify simple question. And I know you want to tell a
21 story, but we're going to be here for three or four weeks at
22 this rate.

23 THE WITNESS: No, we -- there was not a campaign.

24 JUDGE WEDEKIND: So just answer the question. And wait
25 for the next question.

1 THE WITNESS: Okay.

2 Q BY MS. DEMIROK: But at this meeting on March 29th, the
3 Union organizing --

4 MR. DAWSON: Objection. Is it March 29th or April 29th?

5 JUDGE WEDEKIND: April --

6 MS. DEMIROK: I'm addressing March -- I meant April.

7 JUDGE WEDEKIND: April 29th.

8 Q BY MS. DEMIROK: So at the April 29th meeting, the topic
9 about the Union organizing came up; is that right?

10 A The Union organizing, we didn't --

11 Q Not the --

12 A It was probably -- it probably did. I mean if it did,
13 it's through questions. But like I said, we didn't -- I don't
14 remember Mark, you know, saying anything about a Union
15 campaign, no.

16 Q So that wasn't the main thing he was talking about, was
17 it?

18 A No, it was the communication -- it was just communications
19 with associates of what we're going to do different to improve.

20 Q But Mr. Engdahl said in this meeting that he understood he
21 who was behind the organizing campaign; isn't that right?

22 A I don't know he said that. To the best of my
23 recollection, I don't know he said that.

24 MS. DEMIROK: Your Honor, if I could have just a moment.

25 JUDGE WEDEKIND: Okay. Off the record.

1 (Off the record at 9:59 a.m.)

2 Q BY MS. DEMIROK: Mr. Vaivao, I want to talk about an
3 incident that took place on May 5th, 2015. You met with an
4 employee in Mr. Engdahl's office; didn't you?

5 A Yes.

6 Q Who was that employee?

7 A Mario Lerma.

8 Q And you stayed for the duration of that meeting; didn't
9 you?

10 A Yes.

11 Q And other than yourself, Mr. Engdahl and Mr. Lerma, was
12 anyone else present?

13 A No.

14 Q And Mr. Engdahl did most of the talking during this
15 meeting, too, didn't he?

16 A He did all the talking, yes.

17 Q He did all the talking?

18 A He did all the talking. I don't remember me saying
19 anything.

20 Q You didn't say a word?

21 A I don't remember me talking in that meeting. It was more
22 Mark Engdahl wanted to communicate with Mario Lerma.

23 Q And the reason why he wanted to communicate with Mr. Lerma
24 was because he heard some rumblings on the warehouse floor;
25 isn't that true?

1 A The reason why is because associates were reporting to
2 Mark Engdahl that there's some heckling, there's a pen throwing
3 incident and there was concerns that fork lifters weren't
4 making -- doing their work. Essentially affecting operations.
5 And there is -- Mr. Lerma apparently had mentioned that there
6 was some tasks that -- management were deleting tasks. So Mark
7 Engdahl wanted to make sure that hey, A) operationally we're
8 not being affected by not completing -- by not doing the tasks
9 and management are not deleting tasks.

10 Q But what he told Mr. Lerma was that the reason he was
11 there was because he heard some rumblings on the warehouse
12 floor; isn't that right?

13 A Those were the rumblings, yes.

14 Q And that's what he told Mr. Lerma, right?

15 A That's what he told Mr. --

16 Q Just that there were some rumblings on the warehouse
17 floor?

18 A He told -- he explained to him that there's heckling going
19 on in the warehouse. There is associate pen throwing that
20 involved Mr. Lerma's name, circled Mr. Lerma's name. That
21 associates -- other -- that certain associates -- the drops
22 weren't made for certain associates, which affecting our
23 operation and Mr. Lerma had mentioned to associates that
24 management were deleting tasks. So he wanted to make sure that
25 A) our operation is not affected by it and B) if management is

1 doing something wrong, he needed to know that. That was his
2 job.

3 Q Right, so Mr. Engdahl said that there was heckling going
4 on, right?

5 A Yes.

6 Q He said that there was insulting going on; is that right?

7 A There was some pen throwing, yes. I'm not that he
8 mentioned insulting --

9 Q Insulting, right?

10 A But there was some pen throwing. Fork lifters were
11 throwing pens at, you know, at pickers that, you know, refused
12 to sign.

13 Q But he didn't tell Mr. Lerma that; did he?

14 A He told him that.

15 Q In this meeting?

16 A In this meeting. He mentioned all those things to him.

17 Q And he also mentioned that there was a potential slowdown
18 on certain folks who didn't share Mr. Lerma's certain point of
19 view; is that right?

20 A That was the operational slowdown. It was certain
21 associates weren't getting their drops because of the knowledge
22 that hey, those guys don't want to sign for the Union.

23 JUDGE WEDEKIND: Did he say that?

24 THE WITNESS: He said that, yep.

25 Q BY MS. DEMIROK: So he actually explained what this

1 potential slowdown was; is that what you're saying?

2 A Yes.

3 Q And Mr. Engdahl, he told Mr. Lerma that this was just kind
4 of a heads up, right?

5 A Yes, to let him know -- does he know what the impact is?
6 The impact was impacting our operation. He wanted to make sure
7 that Lerma knew that that was an impact to the operation and
8 then he wanted Mr. Lerma to understand that the comment about
9 management deleting tasks, he wanted to know that, so that way
10 he can look into if we were doing something wrong. So the
11 reason I was there is because of that. That specific reason.

12 Q Because you actually had a conversation with Mr. Lerma
13 about a week prior to that; didn't you?

14 A I had a conversation about deleting tasks and he knew
15 exactly when I sat down with him, he said yes, I didn't say
16 management is deleting tasks. I said tasks are being deleted.

17 Q And you told him to stop spreading the rumors, right?

18 A No, I didn't tell him to stop spreading rumors.

19 Q Well, let's go back to this May 5th meeting. Mr. Engdahl
20 said that he just wanted Mr. Lerma to take note and stay out of
21 trouble. Is that right?

22 A I don't remember him saying -- tell him that. It was a
23 casual conversation to let Mr. Lerma -- that his name came up a
24 lot, to make sure that hey, he's not doing that. There was
25 concerns as Mark walks through, an associate would approach

1 Mark.

2 Q And Mark told him that the heckling would not be
3 tolerated; is that right?

4 A Harassment would not be tolerated. Mark told him that
5 hey, any kind of harassment in the warehouse is not tolerated.

6 Q But he said heckling, not harassment, right?

7 A He said harassment, I know that. We have a no harassment
8 policy.

9 Q So he never said that heckling would not be tolerated?

10 A Not sure if those were the exact words, but I know what he
11 said was any kind of harassment on the floor is not tolerated.

12 Q And he told Mr. Lerma that insults wouldn't be tolerated
13 either, right?

14 A As far as insults, I haven't heard that word, insults. It
15 was more the pen throwing incident.

16 Q So he said throwing pens, it won't be tolerated; is that
17 right?

18 A No, he didn't say throwing pens wasn't tolerated. He said
19 harassment on the floor is not tolerated.

20 Q And he was referring to the pen throwing incident?

21 A He was referring to the pen throwing, anything that went
22 on is considered as harassment.

23 Q And as you testified before, he explained what the
24 harassment was in regards to the pen throwing, right?

25 A He explained the incident that Lerma's name popped up in

1 all those incidents. He explained to Lerma the pen throwing
2 incident, his name brought up that he wasn't doing, you know,
3 the drops for certain individuals. He explained to him that
4 associates came up, mentioning his name saying that management
5 was deleting tasks.

6 Q And Mr. Engdahl told Mr. Lerma that he could get in
7 serious trouble for that, right?

8 A Not that I recall.

9 Q He never said that this whole meeting was to avoid getting
10 in serious trouble?

11 A I don't remember that. I don't remember him telling Lerma
12 to -- this meeting was specifically to avoid him getting in
13 trouble.

14 Q Didn't ever say that?

15 A I don't think he said that.

16 Q Now, Mr. Engdahl wasn't really giving specifics, was he?

17 MR. DAWSON: Objection. It's been asked and answered.

18 JUDGE WEDEKIND: Wasn't giving specifics. About what?

19 And he has testified in pretty good detail.

20 MS. DEMIROK: Okay. Let me ask some follow-up.

21 Q BY MS. DEMIROK: So you testified that Mr. Engdahl, he
22 brought up some specific issues that were going on in the
23 warehouse floor?

24 A Yes.

25 Q So he never said, Mr. Engdahl this is, Mr. Engdahl never

1 said to Mr. Lerma that he was speaking as generically as he
2 could?

3 A I'm not sure that -- I don't remember that. I don't
4 remember that. I knew he told Lerma that his name was around
5 the issue that we brought up. But as far as generic, I don't
6 remember him saying I'm speaking as generic, you know, I don't
7 remember him saying I'm speaking generic.

8 Q And he wouldn't say that if he was giving specific
9 examples, right?

10 MR. DAWSON: Objection. I don't think Mr. --

11 JUDGE WEDEKIND: Sustained. Sustained.

12 Q BY MS. DEMIROK: At one point, Mr. Lerma asked for
13 clarification; didn't he?

14 A I'm not sure he asked for any clarification. Mr. Lerma,
15 they had some -- I don't remember he asked for any kind of
16 clarification. But he said -- I know he said that all I'm
17 going to do is come to work and do my job now because I can't
18 control what other people hear. So that's what I remember Mr.
19 Lerma saying towards the end. He said he didn't do that and,
20 you know, the best thing for him is to just to come to work and
21 do his job and go home. Because he can't control people, you
22 know, thinking one thing.

23 Q Now Mr. Engdahl explained to Mr. Lerma that, you know, he
24 could still express his opinions, right?

25 A I'm not sure he said -- I don't know if he did or not.

1 I'm not sure he did or not. I don't recall.

2 Q Didn't he explain that he could express his opinions, just
3 not in a way that others would perceive it as intimidation?

4 A No, he didn't say that. I don't remember him saying that.

5 Q And at one point, Mr. Engdahl even said that he didn't
6 actually know if Mr. Lerma was intimidating others; is that
7 right?

8 A There's -- I don't think there was intimidation --
9 intimidation was going on. He was very specific on the -- but
10 whether he said Mr. Lerma was intimidating anybody, he didn't
11 say that. Not that I remember. I just know that his name --
12 Mark said that Mario's name came up on these incidents.
13 Associates were saying that hey, Mr. Lerma was saying that
14 management is deleting tasks. So but as far as Mr. Lerma was
15 insulting anybody, no. Or intimidating anybody, no. That I
16 know of.

17 Q So then you never explained what could be perceived as
18 intimidation then; did you?

19 A Can you ask that question again?

20 Q So you never explained what could be perceived as
21 intimidation?

22 A The incident was pen throwing. So if you're throwing pens
23 at an associate, that's -- I mean you can perceive it however
24 you want to do it. But pen throwing, that's unacceptable. You
25 shouldn't be throwing pens at anybody that, you know, that

1 doesn't want to sign a card. That's unacceptable.

2 Q My question was at this meeting, you never explained what
3 could be perceived as intimidation to Mr. Lerma; did you?

4 A I don't -- I'm not sure exactly what -- I mean we had to
5 explain, you know, what was perceived as harassment. Just
6 throwing pens at somebody, that could be perceived as
7 harassment.

8 Q So it's obvious, right?

9 A It's there.

10 Q So you wouldn't have had to --

11 A But we didn't, you know, for to explain what harassment
12 was or what was perceived as, you know, didn't go into that
13 detail. It was more a casual conversation. It was a very
14 casual conversation. There was no -- it was exchanged, but
15 there was no, you know, it was -- there was no loud voices. It
16 was -- Mr. Lerma said his piece, he got up and says, you know,
17 I appreciate it and walked out. But it was not, you know, an
18 exchange -- a heated exchange, Mark scolding him, no. It's not
19 that. It was more a counseling, talking to him.

20 Q It was counseling, right?

21 A It was more him talking to him and letting him know.

22 Q So it was like counseling, right?

23 A I mean that's his job. That's -- Mark is the VP of
24 operations. He looks into these type of things. So if Mario
25 Lerma's name popped up, he wanted to make sure that Mario Lerma

1 understood. Knew. There was an element there that Mario Lerma
2 said that he was very concerned about was management deleting
3 tasks. He wanted to make sure that yes, management -- if
4 management was deleting tasks, he needed to know that because
5 he's ultimately responsible. So he was concerned both ways.

6 Q But he was counseling Mr. Lerma on his conduct, right?

7 A Maybe I said counseling, but no, I mean maybe I did say
8 that, it's counseling, but it was a conversation that he wanted
9 to have with Mr. Lerma. So that way he understands that his
10 name is coming up with all these -- all the complaints from the
11 floor.

12 Q And you started talking about what those complaints coming
13 off the floor were, right?

14 A Talking --

15 Q During this meeting?

16 A I don't remember myself saying anything. I didn't say
17 anything. It was more Mark interacting with Mario Lerma. If
18 there's something that Mark needed to understand about the
19 tasking piece, then I would say something. But I don't think I
20 said anything. It was more Mark communicating back with Mario
21 Lerma and then Mario Lerma communicating to Mark and that was
22 it. It was very quick. It wasn't a long meeting. It was
23 pretty quick.

24 Q So you never told Mr. Lerma that you heard from employees
25 that he was very vocal out on the floor?

1 A I never said that.

2 Q And so then you never said that different employees were
3 coming to you with complaints about Mr. Lerma; is that correct?

4 A Not on that -- it was more Mark -- associates were pushing
5 Mark.

6 Q And so if you didn't tell Mr. Lerma that employees were
7 coming to you with complaints, you wouldn't have told them what
8 those complaints were then, were you -- did you?

9 A I didn't tell Mr. Lerma anything that day I don't think.
10 It was more Mark's -- Mark came to me and said hey, is Mario
11 working and I said he doesn't come in until 2. So okay, I need
12 to meet with him. So that's why I was there. But I didn't say
13 anything to Mr. Lerma.

14 Q Okay. And before Mr. Lerma left the office, Mr. Engdahl
15 told him that he wasn't getting in trouble, right?

16 A I don't remember him saying that. But it wasn't about him
17 getting in trouble or anything. I don't think he mentioned
18 that. I don't think Lerma asked if he was in trouble. I don't
19 think it was about that. Nobody was in trouble.

20 Q So whether or not he was getting in trouble never came up?

21 A He never -- there was never an intent for him to be in
22 trouble. It was not an in trouble type of situation.

23 Q Mr. Engdahl said he explained to Mr. Lerma that he just
24 wanted everyone to get along, right?

25 A I don't remember those exact words, but I'm pretty sure he

1 said something to those regard. But I don't remember those
2 exact words.

3 Q But he explained that, right. He just said, I just want
4 everyone to get along. Maybe not in those words, but was that
5 the gist of it?

6 A I'm pretty sure he did. I'm not sure exactly he told him
7 that.

8 Q Did he tell him that it was just about getting the work
9 done and that's what's important, right?

10 A I think he said -- I don't think he said that. I think he
11 said hey, just come in and do your job. Just come in and do
12 your job. Everybody, you know, has a job to do. Just come in
13 and do your job.

14 Q And Mr. Engdahl also said that he didn't want anything bad
15 happening while Shamrock was going through all this?

16 A No.

17 Q Never said that?

18 A I didn't hear him say that. I don't think he said that.

19 Q And then Mr. Engdahl told Mr. Lerma that he was valuable,
20 right?

21 A Like I said, I don't remember that as well that he was
22 valuable. If he did, I mean I don't remember him telling Mr.
23 Lerma he's valuable. Everybody is. Everybody is on our team
24 is. Everybody plays a critical part on our team. But if
25 you're asking me if I remember that, I don't remember that as

1 well.

2 Q And Mr. Engdahl also said that Shamrock couldn't afford to
3 lose anybody; isn't that right?

4 A I don't know he said that.

5 Q How long did that meeting last?

6 A I don't know. That was a very short meeting. It wasn't a
7 very long meeting.

8 Q And it was just a casual conversation in Mark Engdahl's
9 office?

10 A It was a conversation that Mark Engdahl had with Mario
11 Lerma and I was there. I was present.

12 Q Now Mr. Engdahl, you mentioned before that he's two steps
13 above you in the supervisory train; is that right?

14 A I report to Jerry Kropman and Jerry Kropman reports to
15 Mark Engdahl.

16 Q And what's Mr. Engdahl's title again?

17 A VP of operations.

18 Q Okay.

19 MS. DEMIROK: Your Honor, if we could take a short recess.
20 I just want to figure out exactly what I want to go back over.
21 But I think we've made it through most --

22 JUDGE WEDEKIND: Let's take a bathroom break. Off the
23 record. Five minutes.

24 MS. DEMIROK: That works.

25 JUDGE WEDEKIND: Okay.

1 (Off the record at 10:20 a.m.)

2 JUDGE WEDEKIND: Back on the record. Okay.

3 Q BY MS. DEMIROK: All right. Mr. Vaivao, yesterday, you
4 testified about some things that were said during a meeting on
5 February 5th. And I want to go back over that day and that
6 meeting. Yesterday, you testified that this meeting was to
7 follow-up with employees on some of the things that were said
8 at some roundtable meetings?

9 MR. DAWSON: Your Honor, may I object. This was the
10 objection that we had raised -- I'm sorry. This was the
11 objection we had raised as a preliminary objection. Actually,
12 was it yesterday? I think it was yesterday, about the audio
13 and video recordings --

14 JUDGE WEDEKIND: Okay.

15 MR. DAWSON: -- that we had asked to be given a reasonable
16 opportunity to review it prior to its admission. I think, when
17 we requested it initially, general counsel said it was
18 confidential. But to the extent that they seek to submit it as
19 an exhibit, we asked to be given a reasonable opportunity to
20 review it in its entirety, not edited, so that we can, you
21 know, obviously see the context, and so forth, and use it for
22 whatever purpose that we'd like to use it for.

23 JUDGE WEDEKIND: So I'm not sure what's happening now.
24 Are you going to show this to -- present this to the witness?
25 What are you doing?

1 MS. DEMIROK: So, Your Honor, we have -- we'd like to
2 confront the witness with some prior inconsistency events under
3 Rule 601(b) of the Federal Rules of Evidence, regarding his
4 testimony from yesterday, with February 5th, 2015, and the
5 inconsistent statements are in an audio recording.

6 JUDGE WEDEKIND: An audio recording of what?

7 MS. DEMIROK: Of this meeting on February 5th, 2015.

8 JUDGE WEDEKIND: That he attended and spoke at?

9 MS. DEMIROK: Uh-huh.

10 JUDGE WEDEKIND: Okay. And so, you're going to play it
11 now?

12 MS. DEMIROK: We'd like to play it.

13 JUDGE WEDEKIND: And you're only going to play a portion
14 of it or the whole thing?

15 MS. DEMIROK: I'd like to play the portions that we
16 covered in the testimony yesterday.

17 JUDGE WEDEKIND: And what is the court reporter supposed
18 to do? Is the court reporter going to transcribe the audio
19 or --

20 MS. DEMIROK: Well, we are not planning on submitting the
21 audio recording as an exhibit at this point. It's just being
22 used for impeachment purposes. So I --

23 JUDGE WEDEKIND: But that's going to played --

24 MS. DEMIROK: Right.

25 JUDGE WEDEKIND: -- in -- on the record. So would it be

1 transcribed?

2 MS. DEMIROK: I would suggest that if there is an
3 opportunity for the court reporter to transcribe the recording,
4 then I would request that.

5 JUDGE WEDEKIND: Well, it will be recorded, right? It's
6 going to be audio.

7 MS. DEMIROK: It'll be audio, yeah.

8 JUDGE WEDEKIND: So you want it to appear on the
9 transcript?

10 MS. DEMIROK: Yes, please.

11 JUDGE WEDEKIND: Okay. So what's the objection?

12 MR. DAWSON: The objection, Your Honor, is we had asked
13 her for this material before, and we were told that it was
14 confidential, because it was, you know, in the General
15 Counsel's file. But to the extent that it's now being offered
16 for a limited amount, as an impeachment exhibit, or for
17 whatever purpose, obviously, it's not confidential. And to
18 that -- you know, to that end, we would ask the -- a reasonable
19 opportunity to review the recording before it's played to the
20 witness, so that we can be prepared.

21 JUDGE WEDEKIND: Counsel, your response?

22 MS. OVIEDO: Your Honor, no pretrial discovery.

23 JUDGE WEDEKIND: Well, we're not pretrial at this point.
24 We're in the trial.

25 MS. DEMIROK: And also, we are not planning on entering

1 this into the record as an exhibit. This is just confronting
2 the witness with a prior inconsistent statement, as we would if
3 he had given testimony under oath prior to the hearing. And
4 we're offering these statements to be used just in the same
5 way.

6 JUDGE WEDEKIND: However, you said that you wanted it to
7 be transcribed into the record, what is going to be said. So
8 aren't you, in effect, offering it into evidence? You're not
9 just showing something to the witness.

10 MS. DEMIROK: I suppose you would be right about that.
11 And I --

12 JUDGE WEDEKIND: So --

13 MS. DEMIROK: -- would say --

14 JUDGE WEDEKIND: And under those circumstances, they would
15 be required to see the entire --

16 MS. DEMIROK: Okay.

17 JUDGE WEDEKIND: -- document, in this case, an audio
18 recording, if it's going to appear in the record.

19 MS. DEMIROK: Then I would request that they not be
20 transcribed.

21 JUDGE WEDEKIND: Okay. So, at this point, we're going to
22 not transcribe what is being played to the witness.

23 MR. DAWSON: I appreciate that, Your Honor, but we still
24 stand with our objection, that we should be given access to it,
25 particularly in light of the fact that the number of the

1 violations alleged and, in particular, I believe some of the
2 February 5th violations are context dependent. And so, to the
3 extent that an inconsistent statement is being made to show
4 that something unlawful was said, we should have access to the
5 entire recording. To the extent that it's not being -- that
6 it's not attached to an unlawful statement, then we would
7 suggest that it's not probative and doesn't -- you know,
8 doesn't really matter. So that -- our objection stands. We
9 appreciate the fact that it's not going to be recorded into the
10 record, but we still believe it's prejudicial.

11 JUDGE WEDEKIND: All right, okay. Well, unless you can
12 site me a case, I'm going to overrule that objection. It's --

13 MR. DAWSON: I'm sorry. I've been --

14 JUDGE WEDEKIND: Yeah.

15 MR. DAWSON: Co-counsel reminded me to the extent that
16 it's going to be alluded to in the record that he made an
17 inconsistent statement on questioning, in essence, that is --
18 you know, that is submitting it without even submitting the
19 inconsistent statement. In a sense, even more prejudicial.

20 JUDGE WEDEKIND: What do you want to do? I'm inclined to
21 deny the objection to the extent that it doesn't --
22 inconsistent statement, it's just like showing the witness a
23 document. It's not being offered into evidence and asking the
24 witness to review it. Yes, you're entitled to see what he's
25 being shown. In this instance, he's only being shown, played

1 part of an audio recording.

2 MR. DAWSON: Well, Your Honor, if it's being -- to me, it
3 sounds like what Your Honor is referring to would be refreshing
4 recollection. So if what General Counsel wants to do is play
5 the recording and then ask Mr. Vaivao if his recollection of
6 the meeting is refreshed and if he'd like to testify further,
7 then that's -- then I -- you're correct. But to the extent
8 that they want to reference it as an inconsistent statement for
9 impeachment, because refreshing recollection is not
10 impeachment.

11 JUDGE WEDEKIND: It can't if it's not in the record. It's
12 not in the record.

13 MR. DAWSON: But even the fact of him making a prior
14 inconsistent statement should not come in.

15 JUDGE WEDEKIND: Well, counsel is not a witness. And
16 anything counsel says is not evidence, basically, unless it's
17 an admission. It's not an admission. So I'm not going to rely
18 on anything counsel says, okay?

19 MR. DAWSON: Thank you, Your Honor.

20 JUDGE WEDEKIND: All right. So what do you want to do, go
21 off the record and just play it, and then go back on the record
22 and -- you're shaking your head no.

23 MS. DEMIROK: Well --

24 JUDGE WEDEKIND: Is this really short? The bottom line is
25 you don't want it to be recorded and in the transcript.

1 MS. DEMIROK: Okay.

2 JUDGE WEDEKIND: Right?

3 MS. DEMIROK: Then we can go off the record to play it,
4 Your Honor. I would be okay with that.

5 MS. OVIEDO: Can we go off for five minutes to confer off
6 the record?

7 MS. DEMIROK: Just for a moment.

8 JUDGE WEDEKIND: You might change to your mind you mean?
9 You might want it in? You want it in?

10 MS. OVIEDO: I would like to confer with co-counsel.

11 JUDGE WEDEKIND: Okay. Well, if you do put it into the
12 record, I'm inclined to require you to turn the whole thing
13 over just like you would -- we talked about. You agree with
14 that? If -- I mean do you have any dispute with that, that
15 they're entitled to see the entire document if you're going to
16 put part of it in the record. It's not a document. It's an
17 audio tape. It's --

18 MS. DEMIROK: If it's --

19 JUDGE WEDEKIND: -- analogous.

20 MS. DEMIROK: -- not being transcribed, is it actually
21 part of the record?

22 JUDGE WEDEKIND: I thought you said it would not be
23 transcribed.

24 MS. DEMIROK: Right. So it --

25 JUDGE WEDEKIND: Then it's not part of the record.

1 MS. DEMIROK: Right. So in that case, would we have to go
2 off the record? Because they don't -- my understanding is that
3 the court reporter doesn't transcribe --

4 JUDGE WEDEKIND: Okay.

5 MS. DEMIROK: -- audio.

6 JUDGE WEDEKIND: Well, that's fine. We can just tell the
7 court reporter not to transcribe it. It better not show up.

8 MS. DEMIROK: I would prefer that and stay on the record.

9 JUDGE WEDEKIND: That's fine. That's fine.

10 Just don't transcribe the audio recording, Debbie, okay?
11 All right.

12 You want to play it?

13 MS. DEMIROK: Yes, we would.

14 JUDGE WEDEKIND: Okay.

15 MR. DAWSON: Your Honor, just for the record, if we could
16 have a standing objection, so I don't have to --

17 JUDGE WEDEKIND: Sure. Sure.

18 (Audio played at 11:17 a.m., ending at 11:20 a.m.)

19 JUDGE WEDEKIND: So what's your plan? I mean are you --

20 MS. DEMIROK: So I'd like to go back over some of the
21 things that he testified yesterday.

22 JUDGE WEDEKIND: Okay.

23 MS. DEMIROK: And --

24 JUDGE WEDEKIND: Are you going to make specific references
25 to what we just heard?

1 MS. DEMIROK: Yeah.

2 JUDGE WEDEKIND: Is that a problem? Are you going to put
3 on the record what the audiotape said --

4 MS. DEMIROK: I will ask --

5 JUDGE WEDEKIND: -- through your questions?

6 MS. DEMIROK: I plan on asking him if it is still his
7 testimony as to what he testified yesterday.

8 JUDGE WEDEKIND: Okay, all right. But to the extent you
9 make any specific reference to what was actually said on the
10 audiotape, I think we're back into the issue we were. So I
11 just caution you that that's an issue.

12 MS. DEMIROK: But, Your Honor, wouldn't I still be able to
13 ask leading questions as far as isn't it true that you said X,
14 Y, Z, even if that is referenced in that audiotape, if I have
15 a --

16 JUDGE WEDEKIND: Sure, as long as you don't say --

17 MS. DEMIROK: -- reasonable basis for that.

18 JUDGE WEDEKIND: As long as you don't refer specifically
19 to what was on the audiotape, I don't think we have a problem.

20 MR. DAWSON: Just further kind of development of the
21 objection, understanding that, you know, the federal rules of
22 evidence are not strictly applicable, you're still required, as
23 I understand it, when you're refreshing a witness'
24 recollection, you have to ask them the preliminary question of
25 would it help if I gave you X document. So I don't think the

1 proper foundation has been laid to refresh this witness'
2 recollection. So I don't believe it's appropriate to ask him
3 about the -- or the audio.

4 JUDGE WEDEKIND: Well, what foundation is missing? I'm
5 lost.

6 MR. DAWSON: The foundation, I believe, under the -- yeah,
7 under the rules, you have to ask the witness do you recall
8 this, yes or no. If he says no, then you have to ask him would
9 it refresh your recollection if you reviewed a document. And
10 then he has to say yes. And if he says no --

11 JUDGE WEDEKIND: Okay. I got you. What meeting --

12 MS. DEMIROK: Your Honor, if I may.

13 JUDGE WEDEKIND: -- are we talking about? What --

14 MS. DEMIROK: If I may respond to that.

15 JUDGE WEDEKIND: Sure.

16 MS. DEMIROK: We are not trying to refresh his
17 recollection. He made some very clear -- he answered questions
18 regarding this meeting very clear yesterday about what he did
19 and did not say. And so, he -- regarding this meeting, the
20 questions that I'm going to ask him are not going to refer to
21 anything that he said he didn't remember.

22 MR. DAWSON: May I respond to that, Your Honor? I don't
23 think, as you pointed out, counsel on either side -- our
24 statements are not evidence. The fact that General Counsel is
25 saying that he made inconsistent statements yesterday. I think

1 they have to point to the transcript portion that -- I don't
2 think it's sufficient to just say you made an inconsistent
3 statement yesterday. I think they have to point to the
4 transcript where he said that -- you know, he said something.

5 MS. DEMIROK: Your Honor, I'm essentially going to be
6 asking him if his testimony is going to be the same as it was
7 yesterday, and asking him the same questions that I asked
8 yesterday. So I'll say you testified to this. And I do have
9 notes on what he testified to and what he didn't. And I'll ask
10 him if that's still his testimony.

11 JUDGE WEDEKIND: Okay. I'm going to overrule your
12 objection. Let's proceed with the questioning and see how it
13 goes. Feel free to make specific objections --

14 MR. DAWSON: Thank you.

15 JUDGE WEDEKIND: -- to specific questions.

16 MR. DAWSON: All right. If I may, just -- and I don't
17 mean to try Your Honor's patience, certainly. Because of the
18 length of yesterday's transcript, we weren't able to get a
19 copy, you know, but we had ordered it. And so, to that extent,
20 if we get the transcript and it comes out that, you know, he
21 did not make an inconsistent statement, we'd ask to have, you
22 know, any answers today stricken, you know, to the extent that
23 it was not a proper refreshing of recollection.

24 JUDGE WEDEKIND: I'll decide -- again, they're not trying
25 to refresh his recollection.

1 MR. DAWSON: Yeah. I'm not exactly sure what they're --

2 JUDGE WEDEKIND: Yeah.

3 MR. DAWSON: -- trying to do. If it's impeachment or
4 refreshing recollection, whatever it is, to the extent that it
5 is based on prior inconsistent testimony, if the transcript
6 doesn't bear out a prior inconsistent statement, then I don't
7 think it should go into the record.

8 JUDGE WEDEKIND: You know, it's up to them. If they don't
9 like the answers they get, perhaps they'll decide to put it
10 into the record as substantive evidence. I don't know. We'll
11 just see where it goes at this point.

12 MS. DEMIROK: Okay. Thank you, Your Honor.

13 MR. DAWSON: The only thing I'm asking, Your Honor, is you
14 mentioned that we should feel free to object. The only thing
15 I'm saying is yeah, I have notes as to what Mr. Vaivao
16 testified to yesterday, but --

17 JUDGE WEDEKIND: I see.

18 MR. DAWSON: -- we don't have the transcript. And
19 therefore, we may not be able to intelligently review -- you
20 know, determine whether or not there's a prior inconsistent
21 statement.

22 JUDGE WEDEKIND: Sure. Sure. Yeah, I understand. That's
23 always a problem. Well, let's just take them as they come and
24 see how it goes.

25 MS. DEMIROK: And I would just like to say we will receive

1 all the transcripts by the time we have to brief -- send a
2 brief to you. And so, those are things that we could always
3 bring out in our brief.

4 JUDGE WEDEKIND: Well, it's always a problem
5 characterizing prior testimony in questioning, because there's
6 always -- usually objections. That's not really what the
7 witness said. That's not exactly what he said. I would try to
8 avoid that then in your questioning.

9 MS. DEMIROK: Right.

10 JUDGE WEDEKIND: Try to do it a different way. Let's try
11 it.

12 Q BY MS. DEMIROK: So is it still your testimony today that,
13 during this February 5th meeting, you never said that you
14 wanted to get a feel for some of the issues that the employees
15 were facing?

16 A As I testified yesterday, it was to the best of my
17 recollection. So as I sit here and listen to that, if I said
18 something -- but I testified yesterday to the best of my
19 recollection. This is February. So what I said yesterday is
20 the best of my recollection. That's what I remember though.

21 Q So is it still your testimony that you never told
22 employees that you wanted to get their feedback?

23 A The feedback on my -- like I said, I testified on my
24 recollection of what I thought happened that day. But the
25 bottom line of everything surrounding this, so that way

1 everybody can understand, the week after this was the start of
2 our new 24-hour operation in receiving. So there was a lot of
3 anxiety about what's that going to look like. We've never gone
4 to a 24-hour operation. So there's a lot of anxiety of hey,
5 what's my schedule going to be, what's that going to look like,
6 what's the workload going to look like. So I wanted to make
7 sure that they understand there's data, that we already booked
8 deliveries coming in, that there is work there when they come
9 in, because the concern was there's going to be -- there's not
10 enough work for them to make their incentive. So that was --
11 majority of the anxiety was based on that -- on the new rollout
12 schedule.

13 We just went through schedule biddings. Some of the
14 associates that were there had a dayshift. And now they might
15 have a second shift or a third shift. We've never gone through
16 something like this. The activity --

17 JUDGE WEDEKIND: Can I just interrupt you for a second?
18 You're giving us a lot of detail that wasn't asked for --

19 THE WITNESS: But I just --

20 JUDGE WEDEKIND: It was a specific question.

21 THE WITNESS: But, Your Honor, I just wanted to make sure
22 that they --

23 JUDGE WEDEKIND: Again, I know you want to make sure, but
24 you never really answered the question. Is it still your
25 testimony?

1 Q BY MS. DEMIROK: Is it still your testimony that you never
2 told employees that you wanted to get their feedback?

3 JUDGE WEDEKIND: Yes or no. And you can explain it if
4 you'd like. But is that still your testimony?

5 THE WITNESS: Yes, that's still my testimony. As my
6 recollection of what that is, yes. My recollection is more
7 Natalie holding the meeting, following up with associates. But
8 also, I wanted to make sure -- there's anxiety out there. Now
9 that I hear that, yes. That was the tone, yes.

10 MR. DAWSON: Again, it's not my intent to instruct the
11 witness, but if we could have an instruction from Your Honor
12 not to mention the recording or hear that.

13 JUDGE WEDEKIND: Yeah. I mean I think we're trying to
14 avoid actually referring to what the recording said. I don't
15 think you've done that, but just as caution.

16 THE WITNESS: Okay.

17 Q BY MS. DEMIROK: I'm not sure if I was quite clear on your
18 answer yes. So is it still your testimony that you never told
19 employees that you wanted to get their feedback?

20 A Yes.

21 MR. DAWSON: Objection to the effect -- to the extent that
22 he didn't testify -- my recollection of his testimony is that
23 he didn't recall telling associates that. So to say is it
24 still -- I mean the record will speak for itself, but -- and if
25 Your Honor would prefer, I can just reserve that object -- I

1 hate to keep doing that based on memory. If Your Honor would
2 prefer, I can --

3 JUDGE WEDEKIND: And I think -- no. I actually appreciate
4 the point. And the fact is I think my recollection is that he
5 did -- maybe not specific with that meeting, but he has
6 certainly testified several times that he can't recall certain
7 things. So, and that's what he's saying he did now. So I
8 don't know. We'd have to go back and look at the record.
9 But --

10 MS. DEMIROK: We'll have to go back and look at the
11 record. But I did take notes on which ones he couldn't recall
12 and which ones he either --

13 JUDGE WEDEKIND: Okay.

14 MS. DEMIROK: -- admitted or --

15 JUDGE WEDEKIND: That's fine.

16 And so, you have the standing objection --

17 MR. DAWSON: Thank you, Your Honor.

18 JUDGE WEDEKIND: -- if the record doesn't support that.
19 But he says it doesn't change his testimony.

20 Q BY MS. DEMIROK: Is it still --

21 JUDGE WEDEKIND: That was what you said, right?

22 THE WITNESS: Yes, sir.

23 JUDGE WEDEKIND: Okay.

24 Q BY MS. DEMIROK: Is it still your testimony that you never
25 took notes during that meeting?

1 A Yes.

2 Q Is it still your testimony that you said we wanted to get
3 in front of it?

4 A Yes.

5 Q And is it still your testimony that you didn't continue to
6 ask what the big issues were in the warehouse?

7 A Yes, it's still my testimony as the best of my knowledge,
8 yes.

9 MS. DEMIROK: Your Honor, if we could take a recess and
10 maybe even break for lunch.

11 JUDGE WEDEKIND: Any objection?

12 MR. DAWSON: No objection.

13 JUDGE WEDEKIND: Okay. How long do you want for lunch?

14 MS. DEMIROK: How long do you typically --

15 JUDGE WEDEKIND: An hour, 45 minutes to an hour.

16 MS. DEMIROK: An hour.

17 JUDGE WEDEKIND: You want an hour?

18 MS. DEMIROK: Yeah, an hour.

19 JUDGE WEDEKIND: Okay.

20 MS. DEMIROK: Great.

21 JUDGE WEDEKIND: 12:30.

22 MR. DAWSON: Thank you, Your Honor.

23 JUDGE WEDEKIND: Go off the record.

24 (Off the record at 11:33 a.m.)

25 JUDGE WEDEKIND: Back on the record.

1 MS. DEMIROK: And, Your Honor, if we could address the
2 matter before we continue.

3 JUDGE WEDEKIND: Sure.

4 MS. DEMIROK: So we've decided to follow the plan as far
5 as the recordings.

6 JUDGE WEDEKIND: Okay.

7 MS. DEMIROK: And what we'd like to do is admit the
8 recordings we have into evidence. And of course, we would lay
9 the appropriate foundation for that and authenticate the
10 recordings as we need to. But we would like to continue to
11 question the witness about the recordings that we do have, and
12 have him testify to as much foundational elements as he can.
13 And then provisionally, we would move to admit the recordings
14 and the certified transcripts that go along with those
15 recordings, upon bringing a witness to authenticate them in
16 full when that witness is called to testify.

17 JUDGE WEDEKIND: Okay. So you want to use this witness,
18 in part, to authenticate?

19 MS. DEMIROK: That's right.

20 JUDGE WEDEKIND: And lay the foundation. But you want to
21 go ahead and admit it now, today, provisionally.
22 Provisionally?

23 MS. DEMIROK: Provisionally.

24 MR. DAWSON: We think that it's only fair for us to have
25 -- if the intent is to admit these as exhibits, the

1 confidentiality objection that was asserted to production is --
2 you know, we think we're entitled to them upfront. We're in
3 trial. To the extent that they intend to use them, I think we
4 should receive them upfront before a witness is examined on
5 them. So we would make that request.

6 JUDGE WEDEKIND: Okay. So what's the situation? Have you
7 transcribed them already or no?

8 MS. DEMIROK: All of the -- all of -- yes, all of them are
9 transcribed.

10 JUDGE WEDEKIND: Okay. Are you ready to hand over the
11 transcript?

12 MS. DEMIROK: We are. We are waiting on some copies which
13 --

14 JUDGE WEDEKIND: Okay.

15 MS. DEMIROK: -- should arrive at any moment. But yes,
16 we're -- I'm prepared to do that.

17 JUDGE WEDEKIND: Okay. Any --

18 MR. DAWSON: Would this be all of the audio or just
19 today's audio?

20 MS. DEMIROK: These would be the audio that either -- most
21 of which we -- maybe even all of it we've talked about already.
22 He either attended the meeting or he took part in conducting
23 the meeting.

24 JUDGE WEDEKIND: So it's just this meeting, the one --

25 MS. DEMIROK: No, it would be quite a few meetings.

1 JUDGE WEDEKIND: Okay. And is it the entire meeting?

2 MS. DEMIROK: We do have the entire meeting for all of
3 them, yes.

4 JUDGE WEDEKIND: Okay.

5 MR. DAWSON: We would request that today, if possible,
6 that we be provided with copies of all the meetings that they
7 intend to use in their entirety, so that we can, you know,
8 object to the extent that we need to intelligently.

9 JUDGE WEDEKIND: Well, you -- I think this is a matter of
10 to avoid delay.

11 MS. DEMIROK: Uh-huh.

12 JUDGE WEDEKIND: But there's no doubt you're going to
13 introduce them. Turn them over soon rather than later.

14 MS. DEMIROK: Yes, absolutely.

15 JUDGE WEDEKIND: Okay.

16 MS. DEMIROK: We didn't intend to put them into evidence.
17 But as things have progressed, we've decided to change that.

18 JUDGE WEDEKIND: Okay. So let's see what you get, and
19 then -- now you voiced some other objections at the outset of
20 the hearing. Do you still have those objections or no? Or do
21 you want to wait?

22 MR. DAWSON: If I could remember what they are, I could
23 probably answer.

24 JUDGE WEDEKIND: Well, if you can't remember, then I'm not
25 concerned about it. But I mean you made the objections on the

1 record, and I didn't rule. You said that the only -- they're
2 only allowed in for non-substantive matters.

3 MR. DAWSON: Yeah, correct, Your Honor. And yes, we would
4 still assert those. I'm sorry.

5 JUDGE WEDEKIND: So your position is they can't be put
6 into evidence as substantive affirmative evidence of what was
7 said at the meetings?

8 MR. DAWSON: Our position would be that if we're not
9 provided with copies in advance on the cases, which we are --

10 JUDGE WEDEKIND: But you are. But you are.

11 MR. DAWSON: Yeah. So, you know, we also -- and I will be
12 admitting a copy or submitting a copy tomorrow to Your Honor of
13 the subpoena that was served, to try to get these same
14 recordings as well.

15 JUDGE WEDEKIND: Served on?

16 MR. DAWSON: The Union.

17 JUDGE WEDEKIND: Okay. But not the General Counsel?

18 MR. DAWSON: Correct, not the General Counsel.

19 JUDGE WEDEKIND: Okay.

20 MR. DAWSON: Yes. So our position is that, you know, we
21 should receive them upfront. If we do receive them upfront,
22 then we'll, you know, reevaluate to the extent that we can.

23 JUDGE WEDEKIND: Okay. Well, that's an interesting issue,
24 but the fact is it sounds like you're going to get them today,
25 as you requested in your subpoena from a different party. So,

1 and you haven't requested anything aside from that. But, so
2 you are not objecting to the admission of these audios for
3 affirmative substantive evidence of what was said as long as
4 you get a copy.

5 MR. DAWSON: Well --

6 JUDGE WEDEKIND: And you're satisfied that they're
7 authenticated.

8 MR. DAWSON: No, no. I'm sorry. I didn't mean to suggest
9 that. No, we can't -- I don't think that this witness will be
10 able to authenticate them, because he can't testify to the
11 necessary --

12 JUDGE WEDEKIND: Well, that's a different issue.

13 MR. DAWSON: I agree.

14 JUDGE WEDEKIND: Okay.

15 MR. DAWSON: But we're not stipulating to authentication
16 or authenticity.

17 JUDGE WEDEKIND: I understand.

18 MR. DAWSON: That was done in -- no fairness to -- I meant
19 -- to the question --

20 JUDGE WEDEKIND: Okay.

21 MR. DAWSON: -- as to an stipulation of authenticity.

22 JUDGE WEDEKIND: Okay. Well, let's just put this aside
23 until it's actually introduced into evidence. And if you have
24 any objections to it at that time --

25 MR. DAWSON: Thank you.

1 JUDGE WEDEKIND: -- we'll take them as they come. Okay.
2 What do you want to do at this point? Do you want to wait to
3 get the copies before you proceed, or you want to ask other
4 questions?

5 MS. OVIEDO: Do you mind if I go check on the status of
6 them?

7 JUDGE WEDEKIND: Sure. Let's go off the record.

8 (Off the record at 12:46 p.m.)

9 JUDGE WEDEKIND: Let's go on the record. So, as I
10 understand it, the plan will be, with respect to each meeting,
11 you'll provide counsel for the Company a copy of whatever
12 you're examining the witness about.

13 MS. DEMIROK: That's correct.

14 JUDGE WEDEKIND: Before you start the examination.

15 MS. DEMIROK: That's correct.

16 JUDGE WEDEKIND: And as well as the audiotape?

17 MS. DEMIROK: As well as the audiotape.

18 JUDGE WEDEKIND: Okay. Do you want to do that now or
19 you're not ready to start -- go there yet?

20 MS. DEMIROK: Well, if we could -- I just wanted to get
21 some clarification as far as --

22 JUDGE WEDEKIND: Okay.

23 MS. DEMIROK: -- you know, the extent of the questioning
24 and where --

25 JUDGE WEDEKIND: Okay. Well, you're going to start -- I

1 understand you're going to start with identifying and
2 authenticating.

3 MS. DEMIROK: That's right.

4 JUDGE WEDEKIND: The questions will be directed to that
5 issue. And to some extent, we're bound by -- I suppose we're
6 going to get into what's actually on -- in the transcript of
7 the audiotape. It's not at that point. We're not -- it's not
8 being put into the record as substantive evidence of what was
9 actually said. We're just dealing with this preliminary issue
10 of admissibility. So even if it makes it into the record, you
11 can't rely on it until I say you can.

12 MR. DAWSON: And then, Your Honor, just for reference
13 purposes, on page 105 of the NLRB's bench book --

14 JUDGE WEDEKIND: Uh-huh.

15 MR. DAWSON: -- discussion of authentication. And it
16 states that prior -- proper authentication of a tape means, in
17 part, any editing must be explained by someone with knowledge
18 of the editing.

19 JUDGE WEDEKIND: Right. And we don't have any editing.

20 MR. DAWSON: Well --

21 JUDGE WEDEKIND: We don't have any evidence of editing.

22 MR. DAWSON: That we know of.

23 JUDGE WEDEKIND: Okay.

24 MR. DAWSON: And this witness can't testify as to whether
25 or not the tape was ended.

1 JUDGE WEDEKIND: Yes, he can. Yes, he can.

2 MR. DAWSON: Well --

3 JUDGE WEDEKIND: Yes, he can.

4 MR. DAWSON: -- to the extent he recalls he would be able
5 to.

6 JUDGE WEDEKIND: So I mean this is -- let's see how far it
7 goes. You can -- it's well-established you can authenticate a
8 document or anything else based on circumstantial evidence. It
9 doesn't have to be necessarily the person that did it. Let's
10 see what you get, and we'll go from there. And we can address
11 any admissibility issues once offered.

12 MR. DAWSON: And thank you, Your Honor. But the other
13 thing that I just wanted to raise quickly again, just because
14 we had some -- you know, a bit of changed circumstance, if we
15 still reserve the objection, or if we review the transcript to
16 object on improper impeachment, just because we don't have the
17 transcript and, you know, we don't want to have to object just
18 on memory, if Your Honor would indulge, if we could
19 subsequently object once we get the transcript, to say that was
20 improper impeachment.

21 JUDGE WEDEKIND: Yeah. I think it's always true that a
22 question -- if the premise of a question is incorrect, you're
23 always going to have that argument later.

24 MR. DAWSON: Okay. So we do -- is it okay if we don't
25 object, then we can just have a standing objection on that

1 basis?

2 JUDGE WEDEKIND: Well, no. I mean if you think it's
3 clearly incorrect, you should say so. If a -- if counsel
4 completely mis-describes prior testimony, feel free to --

5 MR. DAWSON: Certainly, yes. We'll do that. Thank you,
6 Your Honor.

7 Q BY MS. DEMIROK: Mr. Vaivao, before we took a break, we
8 were talking about the February 5th meeting. And --

9 JUDGE WEDEKIND: Before we -- do you intend to call the
10 individual who tape recorded the meetings or not?

11 MS. DEMIROK: Yes.

12 JUDGE WEDEKIND: Okay, all right.

13 MS. DEMIROK: Yeah. He'll be testifying.

14 JUDGE WEDEKIND: That helps. That helps with respect to
15 the editing.

16 MR. DAWSON: I thought she --

17 JUDGE WEDEKIND: I mean it makes it simpler. And as far
18 as you know, have any of the tape recordings been edited in any
19 way, as far as you know?

20 MS. DEMIROK: As far as I know, no.

21 JUDGE WEDEKIND: Okay. And the transcripts are complete?

22 MS. DEMIROK: The transcripts are complete. And they were
23 done by the same recording service.

24 JUDGE WEDEKIND: Okay.

25 MS. DEMIROK: So I'm handing the witness what's been

1 marked as 7(a), GC Exhibit 7(a). And I'm also handing
2 Respondent's counsel what's been marked as Exhibit -- GC
3 Exhibit 7(b). And I suppose we give one to the Court as well.

4 JUDGE WEDEKIND: And that's the audio?

5 MS. DEMIROK: This is the audio.

6 (Counsel confer)

7 Q BY MS. DEMIROK: So, Mr. Vaivao, I'm going to play the
8 recording for you once again, and I'd like to tell me -- I'd
9 like you to tell us if and when you hear your voice. And we're
10 going to start the recording at the beginning.

11 (Audio plays at 1:10 p.m.)

12 Q BY MS. DEMIROK: Mr. Vaivao, did you recognize that voice?

13 A No.

14 (Audio continues at 1:11 p.m.)

15 MR. DAWSON: Your Honor, if I may object briefly. This
16 doesn't seem to match the transcript that we have.

17 JUDGE WEDEKIND: Has the meeting started yet? This is
18 from the very beginning of the meeting?

19 MR. DAWSON: Oh, all right.

20 MS. DEMIROK: It's from the very beginning.

21 JUDGE WEDEKIND: Okay.

22 MS. DEMIROK: I was to --

23 JUDGE WEDEKIND: Overruled. Overruled. Let's go.

24 (Audio continues at 1:11 p.m.)

25 Q BY MS. DEMIROK: Mr. Vaivao, do you recognize that voice

1 now?

2 A Yes.

3 Q And who is that?

4 A Steven Phipps.

5 Q And does he work for Shamrock?

6 A Works for Shamrock.

7 (Audio continues at 1:12 p.m.)

8 MS. DEMIROK: Your Honor, this continues for a few more
9 minutes before the actual meeting starts. Would you like --

10 JUDGE WEDEKIND: Again, if there's some way to -- I don't
11 know. What do you want?

12 MS. DEMIROK: I wanted to show that it -- you know, it
13 starts before the meeting.

14 JUDGE WEDEKIND: Sure. How do you know when it starts?

15 MS. DEMIROK: I'm sorry?

16 JUDGE WEDEKIND: How do you know when it starts in the
17 recording? Is there some number, minute number?

18 MS. DEMIROK: I can write down the minute number for the
19 start of the meeting, and we can create a document and admit
20 that. There's approximately six to eight minutes.

21 JUDGE WEDEKIND: Why don't you go to the beginning and
22 then back up a little bit? Can you do that?

23 MS. DEMIROK: Go to the beginning of the meeting and
24 then --

25 JUDGE WEDEKIND: Of the meeting.

1 MS. DEMIROK: -- back up? Sure.

2 (Audio continues at 1:14 p.m.)

3 MS. DEMIROK: This is a little bit before the meeting.

4 (Audio continues at 1:15 p.m.)

5 Q BY MS. DEMIROK: Mr. Vaivao, do you recognize that voice?

6 A Yes.

7 Q And who's voice is that?

8 A It sounds like me.

9 Q And do you recall having this meeting at -- on February
10 5th? Does this appear to be an accurate representation of the
11 beginning of that meeting?

12 A It sounds like it.

13 MS. DEMIROK: Your Honor, I would suggest that we move
14 towards the end of the recording --

15 JUDGE WEDEKIND: Uh-huh.

16 MS. DEMIROK: -- to show that this -- the recording
17 continued through the end. It is over -- it is about an hour
18 long. So I'm not sure. I mean I have no problem listening to
19 the whole thing, but --

20 JUDGE WEDEKIND: When were you planning on calling the
21 individual or individuals who made the tape recordings?

22 MS. DEMIROK: They would testify to some of the things
23 that were said in the meeting. And there are some other events
24 that are not recorded that they would be testifying about. But
25 they would testify in regards to the authenticity as far as the

1 recording device and chain of custody.

2 JUDGE WEDEKIND: And when will that be?

3 MS. DEMIROK: That would be -- we would have two or three
4 other witnesses before that person testifies.

5 JUDGE WEDEKIND: Okay. Management witnesses?

6 MS. DEMIROK: Yes.

7 JUDGE WEDEKIND: Yeah. Well, you know, and you're going
8 to be using transcripts with all of them?

9 MS. DEMIROK: Yes.

10 JUDGE WEDEKIND: Why not authenticate this first?

11 MS. DEMIROK: We -- I --

12 JUDGE WEDEKIND: I mean because, otherwise, we get this
13 all in the record. Company really doesn't know --

14 MS. DEMIROK: Uh-huh.

15 JUDGE WEDEKIND: -- whether it's going to get in or not.

16 MS. DEMIROK: Well, I would suggest that we call that
17 witness to have him -- there's actually two different witnesses
18 that will have to authenticate the different recordings. But I
19 would like to reserve the right to only have them testify on
20 that issue and then recall them for --

21 JUDGE WEDEKIND: Sure. That's --

22 MS. DEMIROK: -- matters.

23 JUDGE WEDEKIND: -- what I'm suggesting, yeah.

24 MS. DEMIROK: Okay.

25 JUDGE WEDEKIND: Yeah. I think that's really the only

1 fair way to go considering the degree to which you're going to
2 be asking questions about this. Let's get the admissibility
3 resolved first. When can you get the -- there's one who taped
4 this, right?

5 MS. DEMIROK: There's only one --

6 JUDGE WEDEKIND: Yeah.

7 MS. DEMIROK: -- this from. From what I understand, he is
8 on standby, but his travel time is a little bit. It could take
9 anywhere from 45 minutes to 90 minutes for him to get here.

10 JUDGE WEDEKIND: Okay. And how many could he testify
11 about today?

12 MS. DEMIROK: He can testify about --

13 JUDGE WEDEKIND: This one and a couple others?

14 MS. DEMIROK: This one and quite a few, actually.

15 JUDGE WEDEKIND: Okay, all right. Let's do that. Can you
16 call -- okay -- her in?

17 MS. DEMIROK: Yeah, we'll call.

18 JUDGE WEDEKIND: Okay. Let's go off the record for a
19 second?

20 What? You have any comment on this before --

21 Are we still on the record, Debbie? Are we still on the
22 record?

23 Okay, go ahead.

24 MR. DAWSON: Your Honor, can I -- we've -- can I just
25 confer briefly with co-counsel?

1 JUDGE WEDEKIND: I mean if you have no objection to these
2 coming in, if you're not going to challenge the authenticity,
3 we don't need you to go through -- you know.

4 MR. DAWSON: Let me -- if I may.

5 JUDGE WEDEKIND: Sure. Let's go off the record.

6 (Off the record at 1:19 p.m.)

7 MR. DAWSON: I'm sorry. So what we've agreed with General
8 Counsel is that we will not -- we'll agree to go forward on a
9 provisional basis --

10 JUDGE WEDEKIND: Okay.

11 MR. DAWSON: -- so that Mr. Phipps doesn't have to travel
12 here just for purposes of authentication. Obviously, we'd
13 reserve -- to the extent anything comes up and, you know -- we
14 don't expect. But if anything comes up, we reserve our right
15 to object. On that -- in exchange for that stipulation -- or
16 agreement I guess is a better term, General Counsel has agreed
17 that they'll provide all the transcripts to us now with the
18 audio, and that provided Your Honor is agreeable, Mr. Vaivao
19 will be the last witness for the day, so that we have time to
20 review the transcripts.

21 JUDGE WEDEKIND: Okay.

22 Is that correct?

23 MS. DEMIROK: That's correct.

24 JUDGE WEDEKIND: Okay. Sounds good to me.

25 MS. DEMIROK: Is it Mr. Vaivao or Mr. Vaivayo.

1 THE WITNESS: Vaivao.

2 MS. DEMIROK: Vaivao.

3 JUDGE WEDEKIND: Okay. All right. Thank you very much.

4 Let's -- so we can proceed then.

5 MS. DEMIROK: Okay.

6 Q BY MS. DEMIROK: So, Mr. Vaivao, we were talking and
7 listening to what took place on February 5th meeting with
8 employees. And we listened to the beginning of it. And what
9 I'd like to do is just go through a few more sections in the
10 middle and in the end, just so we can find out if there -- you
11 think that -- well, I'll ask you questions after we do that.
12 I'm going to start where we left off before.

13 (Audio plays at 1:29 p.m.)

14 Q BY MS. DEMIROK: Do you recognize that voice?

15 A I recognize that voice, yes.

16 Q And who was that?

17 A His name is Matt Scheffer.

18 (Audio continues at 1:31 p.m.)

19 Q BY MS. DEMIROK: And do you recognize that voice?

20 A Yes.

21 Q And who is that?

22 A I believe it's Steven Phipps.

23 Q And he was in the beginning of the recording as well,
24 right?

25 A I think so, yes.

1 Q So --

2 JUDGE WEDEKIND: How do you spell his last name? Do you
3 know?

4 THE WITNESS: P-H-I-P-P-S.

5 JUDGE WEDEKIND: Phipps.

6 Q BY MS. DEMIROK: So from this point on, is this when you
7 were getting questions and answers from the employees -- or
8 getting questions or comments from the employees and then
9 responding to them?

10 A I'm not sure. I'm not sure. I believe it is. It sounds
11 like it. But these are some of the feedback they brought up.
12 This was -- it got kind of sidebar with Steve kind of taking
13 the -- a direction that this meeting is useless. Kind of got
14 sidebar. And then Matt jumped in, I believe -- I think. But
15 yeah.

16 Q Okay. I'm going to go forward just a little bit into the
17 middle, so you can -- and you can tell us what was happening at
18 the time.

19 (Audio continues at 1:34 p.m.)

20 Q BY MS. DEMIROK: And did you recognize that voice?

21 A That sounds like Matt Scheffer.

22 Q Matt Scheffer again.

23 JUDGE WEDEKIND: Now --

24 (Audio continues at 1:35 p.m.)

25 MS. DEMIROK: I'm just going to mark, so we can get it in

1 the record, like what page that part is on in our transcript --

2 JUDGE WEDEKIND: Okay.

3 MS. DEMIROK: -- and what time that was in the recording.

4 JUDGE WEDEKIND: Yeah. That was my -- I was going to
5 interject. But the record won't reflect. To the extent you
6 want it to show, we need that. We need something like that.

7 MS. DEMIROK: Let me just find --

8 JUDGE WEDEKIND: If it's important.

9 MS. DEMIROK: Not so much. I just wanted to be able to
10 show that we're progressing.

11 JUDGE WEDEKIND: So if it's just for authentication and
12 you're not going to rely on anything that was said, then why do
13 we need --

14 MS. DEMIROK: We probably don't, Your Honor.

15 JUDGE WEDEKIND: It's up to you. Whatever you want to do.
16 It doesn't matter to me. It's just --

17 MR. DAWSON: For what it's worth, I don't think we'll ever
18 regret doing that, but we may regret not doing it.

19 JUDGE WEDEKIND: Sure.

20 MR. DAWSON: So --

21 JUDGE WEDEKIND: I agree. That's probably --

22 MS. DEMIROK: Let me just find the right part in the
23 transcript.

24 Q BY MS. DEMIROK: And I'll direct your attention to it, Mr.
25 Vaivao.

1 (Audio continues at 1:37 p.m.)

2 Q BY MS. DEMIROK: So, Mr. Vaivao, if I could direct your
3 attention to page 12 on GC Exhibit Number 7(a), in front of
4 you, on line -- in line 18. We're at minute mark 26 at 15
5 seconds.

6 (Audio continues at 1:39 p.m.)

7 Q BY MS. DEMIROK: So, Mr. Vaivao, we just listened to about
8 a minute of the record from about 25 minutes and 30 second up
9 until 26 minutes and 37 seconds. And it started at the
10 majority of page 12 and running towards the bottom at line 21.
11 Do you -- is that an accurate representation of what happened
12 during this meeting?

13 A It sounds like it.

14 Q Now I'm going to move towards the end of this recording.

15 (Audio continues at 1:40 p.m.)

16 Q BY MS. DEMIROK: And I'd like to direct your attention to
17 page 35 now. And that voice that we were just hearing, whose
18 voice was that?

19 A I think that's Steven Phipps.

20 Q Steven Phipps. And if you could look at about line 8 or
21 9. I'm going to have -- we'll see if this is an accurate
22 representation of the meeting.

23 MR. DAWSON: Can you say the minute?

24 MS. DEMIROK: Oh, sure, yes. The minute is -- right now
25 we're at 55:39.

1 MR. DAWSON: 55:39. Thank you.

2 (Audio continues at 1:40 p.m.)

3 Q BY MS. DEMIROK: And after looking over these -- the
4 transcript and hearing the audio, does that seem like an
5 accurate representation of this meeting on February 5th?

6 A It sounds like Steve was talking about positions, yes.

7 Q And let's just go to the very end of the meeting, so that
8 we can --

9 MS. DEMIROK: And we just played that audio till 58
10 minutes and 30 seconds.

11 MR. DAWSON: Oh, thank you.

12 (Audio continues at 1:44 p.m.)

13 Q BY MS. DEMIROK: And do you recognize that voice again?

14 A Yeah.

15 Q Is that your voice?

16 A That's mean.

17 Q Okay. And then I believe what we're going to be listening
18 to is on page 38. If I could direct your attention to page 38
19 on the transcript, at line 23. And we're at 1 hour 1 minute
20 and 9 second at the moment.

21 (Audio continues at 1:44 p.m.)

22 Q BY MS. DEMIROK: And we haven't heard that voice yet.
23 Whose voice is that?

24 A That would be -- it sounds like Natalie Wright.

25 (Audio continues at 1:45 p.m.)

1 MR. DAWSON: Your Honor, this is an objection that may be
2 more appropriately directed at once Mr. Phipps testifies. But
3 to the extent that the recording goes beyond the meeting and
4 picks up conversations that didn't involve Mr. Phipps, that
5 he's picking up by electronic means, that a federal wiretapping
6 violation. Now, you know, we can -- like I said, we can
7 address that as it comes, but this is following the meeting.
8 It appears -- it seems it's the end of the meeting. It appears
9 that he's recording conversations that he's not a party to. I
10 think that's -- you know, that can be problematic. And I just
11 wanted to put that on the record. He is intercepting
12 communications that he's not a party to by electronic means.
13 It could be an issue.

14 JUDGE WEDEKIND: Well --

15 MS. DEMIROK: If I may, Your Honor. This particular
16 portion, we can go back and listen to it. But Mr. Phipps'
17 voice was -- he was talking.

18 MR. DAWSON: On some of it, he was. But I -- or at least
19 -- I mean I don't know Mr. Phipps' voice. But based on the --
20 but it seemed like Natalie was talking to somebody else in the
21 background.

22 JUDGE WEDEKIND: Yeah. That's not even on the transcript,
23 is it?

24 MS. DEMIROK: No. I think the transcript stops when the
25 meeting actually stops.

1 JUDGE WEDEKIND: All right.

2 MS. DEMIROK: It --

3 JUDGE WEDEKIND: So it may be a concern, but it's not a
4 concern to me or this proceeding --

5 MR. DAWSON: Thank you.

6 JUDGE WEDEKIND: -- at least to that extent.

7 MR. DAWSON: Okay. Thank you, Your Honor.

8 JUDGE WEDEKIND: You know? I mean, if it's a violation of
9 the federal wiretapping statute during the meeting we can
10 discuss that. Otherwise I don't think it's a concern to us.

11 MR. DAWSON: Thank you, Your Honor.

12 JUDGE WEDEKIND: Okay?

13 Q BY MS. DEMIROK: So Mr. Vaivao, does that sound like an
14 accurate representation of the end of that meeting?

15 A It sounds like it.

16 MS. DEMIROK: At this time, Your Honor, I would just like
17 to move to admit these recordings into evidence, what's been
18 marked as -- the transcript and the recording as 7(a) and 7(b)
19 into evidence.

20 JUDGE WEDEKIND: Any objection?

21 MR. DAWSON: Provisionally but subject to authentication?
22 I mean, we -- our -- I think our agreement was that we would
23 reserve objection until Mr. Phipps testified. So if we could
24 ask that, you know, that be left open until Mr. Phipps can
25 authenticate?

1 MS. DEMIROK: We have no problem with that.

2 JUDGE WEDEKIND: Do you have any reason to believe based
3 on what you looked at and what you heard that this is not an
4 accurate transcription?

5 THE WITNESS: I don't have any reason. I don't have any
6 reason to --

7 JUDGE WEDEKIND: Nothing so far that you --

8 THE WITNESS: Nothing so far that I am aware of.

9 JUDGE WEDEKIND: Okay. Okay. Well, I'll allow it in
10 provisionally for now.

11 **(General Counsel Exhibits Number 7(a) and 7(b) Received into**
12 **Evidence)**

13 JUDGE WEDEKIND: I mean, I haven't heard anything -- the
14 witness testified -- I haven't heard anything that makes me
15 believe that this is not accurate. And, I mean, again
16 circumstantial -- it's -- but it'll be provisional for now.

17 MR. DAWSON: And that's all we were asking, Your Honor.

18 JUDGE WEDEKIND: Sure. Sure. These were not submitted to
19 the court in the 10(j) proceeding?

20 MS. DEMIROK: We did submit a portion of one of these
21 recordings.

22 JUDGE WEDEKIND: Okay.

23 MS. DEMIROK: But no, we did not submit all of these.

24 JUDGE WEDEKIND: Okay.

25 MS. DEMIROK: I will maybe try to -- now that we have the

1 process down, try to go a little bit quicker from here on out.

2 JUDGE WEDEKIND: Yeah.

3 Q BY MS. DEMIROK: Okay. Mr. Vaivao, we talked a little bit
4 about the meeting that was held on January 28th. It was a town
5 hall meeting that Mr. Engdahl conducted.

6 A Yeah.

7 Q Do you remember testifying about that?

8 A Yep.

9 Q And when you testified yesterday, you testified that you
10 didn't believe that unions were discussed in that meeting; is
11 that right?

12 A I didn't -- my recollection that I didn't -- I didn't know
13 that there was any union discussions. So you asked me -- my
14 recollection is, yes, that's what I said.

15 Q Okay. Because you couldn't -- you didn't -- okay. Let me
16 just get some clarification. I think my answer (sic) was a bit
17 unclear. So maybe you could tell me. What did you testify
18 about your knowledge about whether or not unions were -- okay.
19 I -- do you know if unions were discussed in a town hall
20 meeting on January 28th?

21 A My recollection, I don't know if it was.

22 MR. DAWSON: Your Honor, if I can pose an objection? I
23 believe that that was Mr. Vaivao's testimony. Initially he
24 said he didn't recall. But then I believe that as we
25 progressed through questioning concerning that meeting he said

1 that associates did raise union issues during that meeting. I
2 am going from memory, so I may have the wrong meeting. But my
3 recollection is that as we got further into his testimony he
4 said that there were associates who did raise complaints about
5 solicitation, I believe. Again, I'm going on memory.

6 JUDGE WEDEKIND: Okay. But why are we having this
7 discussion? What's the problem?

8 MS. DEMIROK: What's the problem? I just was asking him
9 -- because I -- what I have from his testimony from yesterday
10 was just that we talked about the January 28th meeting. We
11 went through who conducted that meeting. And then he said that
12 he didn't believe that unions were discussed during that
13 meeting.

14 JUDGE WEDEKIND: Okay. But whatever. What is your
15 question now?

16 MS. DEMIROK: Well, I want to know if that's still his
17 testimony today.

18 JUDGE WEDEKIND: Has he listened or looked at anything
19 about the January 28th meeting? Why wouldn't it be his
20 testimony today?

21 MS. DEMIROK: I'll move on, Your Honor.

22 JUDGE WEDEKIND: Okay.

23 Q BY MS. DEMIROK: You were at this meeting on January 28th,
24 right?

25 A I'm pretty sure, yes.

1 Q And this was the big meeting with a lot of employees
2 present, right?

3 A Yes.

4 MS. DEMIROK: Your Honor, I'm handing the witness what has
5 been marked as GC Exhibit 2(a). Do you want one of these, Your
6 Honor?

7 JUDGE WEDEKIND: No. No, I don't need it. 8(a) you mean?

8 MS. DEMIROK: Oh, 8(a). I'm sorry.

9 (Counsel confer)

10 MS. DEMIROK: And I've also handed Respondent's counsel a
11 copy of 8(a) and 8(b).

12 MR. DAWSON: Your Honor, not to overburden the record but
13 co-counsel has notes that the meeting that he was asked about
14 yesterday was January 29th. Truthfully, I can't recall. But
15 again, the record will bear out what that was or was not. And
16 we can --

17 JUDGE WEDEKIND: Is this --

18 MR. DAWSON: -- object at that time.

19 JUDGE WEDEKIND: Is this the end all meeting in late
20 January?

21 MS. DEMIROK: Yes.

22 JUDGE WEDEKIND: All I -- that's all I wrote was late
23 January. Okay. It's noted.

24 MR. DAWSON: Okay. Thank you, Your Honor.

25 JUDGE WEDEKIND: All right. Sure.

1 (Audio played at 1:56 p.m.)

2 Q BY MS. DEMIROK: Mr. Vaivao, do you recognize that voice?

3 A I believe that's Steven Phipps.

4 (Audio played at 1:56 p.m.)

5 MS. DEMIROK: I'm going to go forward until just before --

6 JUDGE WEDEKIND: Thank you.

7 MS. DEMIROK: -- the meeting starts.

8 JUDGE WEDEKIND: Thank you.

9 (Audio played at 1:57 p.m.)

10 Q BY MS. DEMIROK: Do you recognize that voice?

11 A Yes.

12 Q And who is that?

13 A That sounds like Mark Engdahl.

14 MS. DEMIROK: And let the record reflect that we were --

15 we started that at just before eight minutes, about 7:58.

16 JUDGE WEDEKIND: Thanks.

17 MS. DEMIROK: And currently we're on eight minutes and 21

18 seconds.

19 Q BY MS. DEMIROK: And Mr. Vaivao, I'd like you to direct

20 your attention to page 2 of the -- what's been marked as GC

21 Exhibit Number 8(a). And if you could just please follow along

22 just for a brief portion of the meeting on this?

23 (Audio played at 1:58 p.m.)

24 Q BY MS. DEMIROK: Was that an accurate representation of

25 the beginning of that meeting?

1 A It sounds like it.

2 Q And you were there during that meeting, right?

3 A Yes.

4 MS. DEMIROK: And I'm going to move on from a minute nine
5 in the recording up until near the end of the recording at --
6 let's try at -- the recording itself is one hour, 14 minutes
7 and 41 seconds. And I'm going to go to one hour, 12 minutes
8 and see if that's near the end.

9 (Audio played at 2:00 p.m.)

10 Q BY MS. DEMIROK: Do you recognize that voice?

11 A I do.

12 Q Who is that?

13 A It sounds like Jerry Kropman.

14 MR. DAWSON: Your Honor, can we get a page in the
15 transcript on that one?

16 MS. DEMIROK: Let me find it.

17 MR. DAWSON: I'm sorry. It's toward the end, right?

18 MS. DEMIROK: It should be towards the end.

19 (Counsel confer)

20 (Audio played at 2:01 p.m.)

21 Q BY MS. DEMIROK: If I could direct your attention to page
22 31, line 20?

23 (Audio played at 2:01 p.m.)

24 Q BY MS. DEMIROK: Does that sound like an -- is that an
25 accurate representation of the end of the meeting?

1 A It sounds like it.

2 MS. DEMIROK: And we went up until one hour, 14 minutes
3 and 33 seconds.

4 Q BY MS. DEMIROK: Now, I want to ask you some more
5 questions about this meeting.

6 A Okay.

7 JUDGE WEDEKIND: Do you want to --

8 MS. DEMIROK: And before I do that, Your Honor, I would
9 like to --

10 JUDGE WEDEKIND: Do you want to -- oh, go ahead. I'm
11 sorry. Did you want to offer it?

12 MS. DEMIROK: I would like to offer --

13 JUDGE WEDEKIND: Okay.

14 MS. DEMIROK: -- Exhibit -- GC Exhibit Number 8(a) and
15 8(b) into the -- into evidence.

16 JUDGE WEDEKIND: Same? Provisionally for now?

17 MS. DEMIROK: Provisionally.

18 JUDGE WEDEKIND: Okay. Same concerns, objections?

19 MR. DAWSON: Your Honor, on that one -- and I haven't had
20 a chance to look at the transcript or hear the whole video, but
21 at least toward the end there there was an awful lot of
22 indiscernible. And at some point it becomes so much
23 indiscernible that it's prejudicial. And so, you know, again
24 provisionally I guess we would assert that objection. It may
25 be that the rest of the recording is fine. I don't -- I'm not

1 sure.

2 JUDGE WEDEKIND: This is after: "Well, no. We're done.
3 We're done"?

4 MR. DAWSON: No. It is -- if you -- if Your Honor --

5 JUDGE WEDEKIND: Oh, earlier it says indiscernible?

6 MR. DAWSON: Right. Right. And so:

7 "While management told us (indiscernible) we're not
8 going to let that happen again (indiscernible) how to
9 or what (indiscernible) with everybody else
10 (indiscernible.) The news is everyone got a job.
11 But a couple --".

12 You know, et cetera, et cetera. So the -- I don't know
13 how many of that -- how much of that is through the transcript.
14 Just flipping through it, I -- and I can't say --

15 JUDGE WEDEKIND: Did you identify who that was, that one
16 male? Do we care? And does it meld into your case at all,
17 General Counsel?

18 MS. DEMIROK: I would say no.

19 JUDGE WEDEKIND: That portion of the --

20 MS. DEMIROK: No. And I would say in -- to the extent
21 that it does become relevant, maybe that could go towards the
22 weight of the evidence as far as the indiscernibleness of
23 the --

24 JUDGE WEDEKIND: Yeah.

25 MS. DEMIROK: -- of the recording.

1 JUDGE WEDEKIND: Okay.

2 MR. DAWSON: But if I understand correctly, Your Honor, we
3 -- with Mr. Phipps on the stand we may be able to ask him who
4 the unidentified males and females -- I'm assuming there's
5 some --

6 JUDGE WEDEKIND: That's true. Yeah. So I hear you. I'm
7 not going to keep it out on that basis now, but you can
8 certainly raise it later. So I'm going to admit it
9 provisionally --

10 MR. DAWSON: Thank you, Your Honor.

11 JUDGE WEDEKIND: -- just like 7(a) and (b).

12 **(General Counsel Exhibits Number 8(a) and 8(b) Received into**
13 **Evidence)**

14 (Court confers)

15 Q BY MS. DEMIROK: So Mr. Vaivao, this meeting was mostly
16 about unions; isn't that right?

17 A It sounds like. I testified yesterday to the best of my
18 ability. So the fact that you have an audio today, it doesn't
19 change what I said yesterday. That was to the best of my
20 recollection.

21 Q Sure. And now that you've heard a little bit more of it
22 and maybe you've remembered more, do you recall if several
23 employees asked questions during that meeting?

24 A That I don't recall. I don't recall a lot of questions.
25 I don't want to, you know, say something that I don't remember

1 saying.

2 Q Uh-huh.

3 A But that -- I mean, most of the meetings were -- the big
4 town hall meetings, we're ushering people in. All the
5 supervisors and managers are ushering people in, making sure
6 everybody got seats, that type of thing. So this is -- when
7 Mark has his meetings, Mark directs his meetings and, you know,
8 he goes forward. But our jobs are making sure that we're
9 ushering people in. Our interpreter, that was one of my
10 biggest things is making sure that we provided an interpreter
11 for one of our associates. So that's kind of our duties for
12 that day.

13 Q And you testified yesterday that you got an interpreter
14 for one of these town hall meetings. But we were talking about
15 the March 31st meeting yesterday, right?

16 A Every town hall meeting which has everybody involved I get
17 an interpreter.

18 Q Okay.

19 A Because we have associates that requires an interpreter.

20 Q Okay.

21 A So if it's a town hall meeting, yes. If it's a specific
22 small meeting and associates need interpreters, then we'll
23 provide an interpreter

24 MS. DEMIROK: Okay. I'm handing the witness what has been
25 marked as GC Exhibit Number 9(a). And I have also handed

1 Respondent's counsel what's been marked as GC Exhibit 9(b).

2 Q BY MS. DEMIROK: Now, you testified yesterday -- and I
3 think we talked about a little bit of it today -- that you held
4 a meeting on February 24th; is that right?

5 A Correct.

6 Q And this was a meeting to educate the employees about
7 unions, right?

8 A To educate employees, yes.

9 (Audio played at 2:11 p.m.)

10 MS. DEMIROK: This is the beginning of the recording. And
11 I'm going to move towards just before the meeting begins.

12 Q BY MS. DEMIROK: Did you recognize who was making those
13 noises?

14 A I don't remember that. I don't recognize that. I don't
15 know.

16 MR. DAWSON: Well done.

17 (Audio played at 2:12 p.m.)

18 Q BY MS. DEMIROK: Mr. Vaivao, did you recognize the voice
19 speaking in this?

20 A Yes.

21 Q And whose voice is that?

22 A It sounds like me.

23 Q And is this an accurate representation of the beginning of
24 that meeting?

25 A It sounds like it.

1 MS. DEMIROK: And for the record, the meeting began at --
2 the recording was at eight minutes at 52 seconds.

3 JUDGE WEDEKIND: Thanks.

4 MS. DEMIROK: And we played it until nine minutes and 48
5 seconds.

6 (Audio played at 2:16 p.m.)

7 MS. DEMIROK: Sorry. I'm trying to get to the end of this
8 meeting.

9 (Audio played at 2:17 p.m.)

10 Q BY MS. DEMIROK: Did you recognize that voice?

11 A Yeah.

12 Q And who was that?

13 A It sounds like Steve Phipps.

14 (Counsel confer)

15 Q BY MS. DEMIROK: Mr. Vaivao, if I could direct your
16 attention to page 21, approximately lines 15 through 18.

17 Would you please play again?

18 (Audio played at 2:18 p.m.)

19 Q BY MS. DEMIROK: And Mr. Vaivao, was that also your voice
20 right there?

21 A That sounds like me, yes.

22 Q And in the transcript, would it be fair that the paragraph
23 that correlates to the recording is on page 30 -- I'm sorry,
24 page 22 line 9, where it says, "That's the reality?"

25 A Yes.

1 Q Is that -- that correlates? And so I just wanted to know
2 for the record that Mr. Rago (phonetic) is not identified in
3 any of those transcripts?

4 A Has not done what?

5 Q Identified by name in the transcript itself. He's one of
6 the unidentified --

7 (Audio played at 2:19 p.m.)

8 Q BY MS. DEMIROK: Did you recognize that voice?

9 A I do.

10 Q And who is that one?

11 A It sounds like Brian Nicklen

12 Q Brian Nicklen?

13 A Yeah.

14 Q And we were at 38 minutes and 42 seconds on the -- and at
15 page 22 in the transcript, lines 14 through 18 has been
16 identified as Brian Nicklen.

17 (Audio played at 2:20 p.m.)

18 Q BY MS. DEMIROK: Mr. Vaivao, do you recognize that voice?

19 A I don't recognize the -- is there more?

20 Q We can play more.

21 A Yeah.

22 (Audio played at 2:21 p.m.)

23 Q BY MS. DEMIROK: Is that an accurate representation of the
24 end of that meeting?

25 A Yeah, that -- I don't remember -- right after the meeting

1 when all of the people are, you know, shuffling in and out at
2 that point, yeah. But that voice, I don't know who that voice
3 is. I don't.

4 Q Did someone fall asleep during the meeting?

5 A No, it was just a joke. Looked like it was sitting down
6 so we kind of, you know, it was kind of a joke, but nobody
7 actually fell asleep.

8 Q I don't know if we've got up whether that was the end of
9 the meeting.

10 A Well, it obviously is. It sounds like it. They're asking
11 about their down time and telling them to clock in, so kind of
12 normally that's how it goes.

13 Q That's at 38 minutes in the recording. In its entirety,
14 the recording is 54 -- and 48 seconds. And we can play the
15 recording as it continues. So Mr. Vaivao, I'll just see if you
16 can recognize the voices --

17 A Okay.

18 Q -- heard in this recording.

19 (Audio played at 2:23 p.m.)

20 Q BY MS. DEMIROK: Before the background noise, did you
21 recognize either one of those voices?

22 A Yeah, it sounds like Steve Phipps, the one voice, but the
23 other voice I don't remember who he's talking to. I can't make
24 out that voice that he's talking to.

25 Q Okay.

1 MS. DEMIROK: Your Honor, I would move to provisionally
2 admit the record and the transcript in evidence at this time.

3 MR. DAWSON: Same, we provisionally object.

4 JUDGE WEDEKIND: It's admitted provisionally.

5 **(General Counsel Exhibit Number 9(b) and 9(b) Received into**
6 **Evidence)**

7 JUDGE WEDEKIND: Both, 9(a) and (b).

8 MR. DAWSON: And just as the exhibit's being handed out,
9 would we be able to get electronic copies of the transcript, is
10 this electronic? It was -- is there -- are there electronic
11 copies?

12 JUDGE WEDEKIND: Rather than the thumb drive you mean?

13 MR. DAWSON: Well, the thumb is the actual audio where we
14 were just looking for the, you know, the daily transcript.

15 JUDGE WEDEKIND: You mean you wanted it emailed to you
16 basically?

17 MR. DAWSON: Right.

18 (Counsel confer)

19 Q BY MS. DEMIROK: Mr. Vaivao, I've given you what's been
20 marked as GC Exhibit Number 10(a), and earlier we talked about
21 a meeting that you attended on March 26th, 2015. Do you recall
22 that meeting?

23 A I only recall the date, but no.

24 Q And this was a meeting where James Allen was present that
25 we talked about?

1 A Yes.

2 (Audio played at 2:29 p.m.)

3 Q BY MS. DEMIROK: Did you recognize that voice?

4 A I do.

5 Q Who's that?

6 A It sounds like Mario Lerma.

7 (Audio played at 2:29 p.m.)

8 MS. DEMIROK: I'm going to try to move it a little bit
9 closer to the beginning of the meeting.

10 (Audio played at 2:31 p.m.)

11 Q BY MS. DEMIROK: Mr. Vaivao, do you recognize that voice?

12 A Sounds like me.

13 Q And I'd like to know -- that voice started about four
14 minutes into the recording, is that an accurate representation
15 of the beginning of this meeting?

16 A Sounds like it.

17 (Counsel confer)

18 Q BY MS. DEMIROK: And if I could direct your attention to
19 page number two on GC Exhibit Number 10(a), line number one,
20 does that correlate to the voice that you just identified as
21 yourself?

22 A I'm number one -- it sounds like me, yeah.

23 Q I'll play a little bit more so you can go through that
24 paragraph.

25 (Audio played at 2:33 p.m.)

1 Q BY MS. DEMIROK: Is that an accurate representation of
2 this meeting?

3 A I have no reason to dispute it.

4 (Audio played at 2:35 p.m.)

5 Q BY MS. DEMIROK: Mr. Vaivao, if I could direct your
6 attention to page 26 line 14. In this paragraph, I'm going to
7 continue playing the audio, but afterwards I'm going to have
8 you recognize employees.

9 (Audio played at 2:36 p.m.)

10 Q BY MS. DEMIROK: And I stopped at 34 minutes and 36
11 seconds, and Mr. Vaivao, did you recognize that voice?

12 A Yes.

13 Q And who was that?

14 A Sounds like me.

15 Q And what you just heard, did that correlate with this
16 paragraph that begins at 14, although maybe we only heard a
17 portion of it?

18 A I don't know .

19 (Audio played at 2:38 p.m.)

20 Q BY MS. DEMIROK: Mr. Vaivao, I want to direct your
21 attention to page 28, line 24 and we're at 37 minutes and 56
22 seconds.

23 (Audio played at 2:38 p.m.)

24 Q BY MS. DEMIROK: Mr. Vaivao, did you recognize the voice
25 throughout that?

1 A Yes.

2 Q And who is that?

3 A That last piece sounds like James Allen.

4 Q Okay. And the majority, before James Allen spoke, who was
5 speaking then?

6 A Sounds like me.

7 Q Okay. And James Allen, can you remind us, who's James
8 Allen?

9 A He's our HR business partner.

10 Q Okay. HR business partner? So does he work for Shamrock?

11 A He works for Shamrock, yes. That was his title, I
12 believe. They referred to him as a business partner, HR
13 business partner.

14 Q Did he start before or after the Union --

15 A Oh, he's been there with Shamrock. The HR role, there
16 were new players there, I think Natalie had moved on and he
17 came in, so HR generalist, is that it? Yeah.

18 Q Okay. And I'm going to continue just through the end of
19 the meeting.

20 (Audio played at 2:42 p.m.)

21 Q BY MS. DEMIROK: Is that an accurate representation of the
22 end of the meeting?

23 A I have no reason to dispute it.

24 MS. DEMIROK: And let the record reflect, it was at 41
25 minutes and 13 seconds and the recording in its entirety is 42

1 minutes and 23 seconds. And at this time General Counsel would
2 like to move to provisionally enter Exhibit GC Exhibit Number
3 10(a) and 10(b) into the record.

4 MR. DAWSON: Provisionally object.

5 JUDGE WEDEKIND: 10(a) and (b) are both received
6 provisionally.

7 **(General Counsel Exhibit Number 10(a) and 10(b) Received into**
8 **Evidence)**

9 Q BY MS. DEMIROK: Mr. Vaivao, I'm handing you what's been
10 marked as GC Exhibit Number 11(a) and I've also handed you --
11 Respondent's Counsel has been marked as 11(b). Now, yesterday,
12 we talked about the town hall meeting on March 31st, 2015.

13 A Yes.

14 Q And this was the meeting that was conducted by Bob Beake;
15 is that right?

16 A Yes.

17 Q And you testified that you attended this meeting, correct?

18 A Yes.

19 Q And you testified that employees asked questions during
20 this meeting, right?

21 A If I did, yes.

22 Q So let's first go through and see if this is any of them.
23 (Audio played at 2:46 p.m.)

24 Q BY MS. DEMIROK: Now, where the minutes are was marked at
25 two minutes and 50 seconds, I believe. And did you recognize

1 that voice, Mr. Vaivao?

2 A Yes, ma'am.

3 Q And who is that?

4 A Sounds like Bob Beake.

5 Q And was that an accurate representation of the Union at
6 that meeting?

7 A I have no reason to dispute it.

8 (Audio played at 2:49 p.m.)

9 Q BY MS. DEMIROK: Sir, if I could direct your attention to
10 page 27, and we're at 46 minutes and 44 seconds right now.

11 MR. DAWSON: Say the time one more time, I'm sorry.

12 MS. DEMIROK: 46:44.

13 MR. DAWSON: 46, okay. 46:44, got it.

14 (Audio played at 2:50 p.m.)

15 Q BY MS. DEMIROK: Did you recognize that voice? Who was
16 that?

17 A It sounds like Kent McClelland.

18 Q Kent McClelland? There's two McClellands, right?

19 A McClelland, yeah.

20 Q There's Kent and then there's also Norman; is that right?

21 A Yes. And say it again. I want to listen to that voice
22 again.

23 Q Yeah.

24 (Audio played at 2:50 p.m.)

25 THE WITNESS: That sounds like Norman.

1 Q BY MS. DEMIROK: Okay. And so was there a video played
2 with the message from Norm McClelland?

3 A That I don't know. I'm not sure. I'm not sure if there
4 was a video there.

5 Q But you were at that meeting, right?

6 A I was at that meeting. Like I said, those were some of
7 the things we were doing. When upper management comes down to
8 DC, that was our jobs. Our jobs -- our duties in the day is
9 kind of ushering people in, that kind of thing, make sure we
10 have enough seats. Usher people in, you know ushering people
11 in, you know, providing, you know, seats for everybody.

12 Q Okay.

13 A But I -- yes. I think there was a video presented.

14 (Audio played at (2:52 p.m.)

15 Q BY MS. DEMIROK: I'm going to move it back to where the
16 question and answer session starts.

17 (Audio played at 2:52 p.m.)

18 Q BY MS. DEMIROK: Okay. If I could direct your attention,
19 we didn't make it much further. We were -- if I could direct
20 your attention to page 28. Do you recognize that voice?

21 A Yes, ma'am.

22 Q Who was that?

23 A That sounds like Norm still.

24 Q Okay. For the record, we're at 48 minutes right now.

25 (Audio played at 2:54 p.m.)

1 Q BY MS. DEMIROK: Now, did you recognize the first voice
2 asking if there were any questions?

3 A I believe that's Bob Beake.

4 Q Okay. And did you recognize the second voice, the person
5 asking the question?

6 A I don't recognize that voice, yeah.

7 Q No.

8 (Audio played at 2:55 p.m.)

9 Q BY MS. DEMIROK: Do you recognize that voice?

10 A Yes, ma'am.

11 Q Who is that?

12 A Sounds like Cindy Pimental.

13 Q And what is her position?

14 A She's in our HR benefits.

15 Q Okay.

16 (Audio played at 2:56 p.m.)

17 Q BY MS. DEMIROK: Did you recognize that voice?

18 A Yes.

19 Q Who was that?

20 A Sounds like Thomas Wallace.

21 Q Okay. I'm going to start there so --

22 (Audio played at 2:57 p.m.)

23 Q BY MS. DEMIROK: And so now we're at 53 minutes and
24 three seconds. Mr. Vaivao, did you recognize the voice that
25 answered the second question?

1 A No. The female voice it sounds like?

2 Q Well, actually -- let's go back a little bit. So you
3 would recognize Thomas Wallace's voice as asking that question
4 in the beginning --

5 A Correct.

6 Q -- and then we went through and we listened to this
7 question. Who answered his question?

8 A It sounds like Bob Beake.

9 Q And then there was another question posed. Who asked that
10 question?

11 A It sounds like Tom Wallace.

12 Q Tom Wallace?

13 A Yeah.

14 Q And who answered that second question?

15 A I believe it's Bob Beake as well.

16 Q Did Tom Wallace ask any other questions during that
17 meeting?

18 A I'm not sure. I'm not sure if he did. Yeah, that I
19 don't -- I'm not sure. I think heap did. I think he had more
20 comments. I think he had more comments after the questions.

21 Q You said he was really rude and inappropriate during that
22 meeting?

23 A I said he -- he's -- I mean, his tone was -- but it wasn't
24 his tone. It was, he start -- he walked out. After -- after
25 the whole, you know, back and forth, he got up and walked out.

1 And as it -- I thought he asked more questions than that. I
2 thought either questions or he had comments after the
3 questions. But it sounds like it doesn't -- it doesn't say
4 that here --

5 Q So that didn't sounds very inappropriate, did it?

6 A Those two questions didn't sound very -- they didn't sound
7 inappropriate. But I thought he had more -- I thought there
8 was more interaction. My recollection, I thought there was
9 more interaction.

10 Q He got fired for his conduct in this meeting, right?

11 MR. DAWSON: Objection. He's already testified to that.
12 It's asked and answered.

13 JUDGE WEDEKIND: I think that's true. He did testify
14 already why he was fired.

15 MR. DAWSON: Just for clarification, I believe he
16 testified that he didn't know why -- he didn't have personal
17 knowledge as to why he was fired because he wasn't --

18 JUDGE WEDEKIND: Whatever. We've already covered it. Is
19 there some reason why you want to cover it again?

20 MS. DEMIROK: Well, it was just another probing question
21 because we didn't -- I didn't know it was -- he said that he
22 didn't know exactly, and I was asking another question so --

23 JUDGE WEDEKIND: Okay. Go ahead.

24 Q BY MS. DEMIROK: He was fired for his conduct in that
25 meeting, right?

1 A I don't know why he was fired. I know -- what I do know
2 is the explanation that was given to me was he was fired for
3 disrespecting a senior officer of the company.

4 Q During that meeting, right?

5 A During that meeting, yes.

6 Q So I'm going to move toward the end of this meeting --
7 (Audio played at 3:03 p.m.)

8 Q BY MS. DEMIROK: We're at 57 minutes and 50 seconds.
9 (Audio played at 3:04 p.m.)

10 Q BY MS. DEMIROK: Is that an accurate representation of the
11 end of that meeting?

12 A Yeah. I don't have any reason to --

13 Q And the end of it was at 58 minutes and about 20 seconds,
14 and the recording continues for another ten minutes.

15 MS. DEMIROK: And at this time, General Counsel would like
16 to move -- provisionally move into evidence GC Exhibit
17 Number 11(a) and 11(b).

18 MR. DAWSON: Same provisions, Judge.

19 JUDGE WEDEKIND: 11(a) and (b) are received provisionally.
20 **(General Counsel Exhibit Number 11(a) and 11(b) Received into**
21 **Evidence)**

22 MS. DEMIROK: Your Honor, do you mind if we take a
23 bathroom break?

24 JUDGE WEDEKIND: Perfect. Let's do that. Five minutes?
25 How much more time do you think you have with this witness?

1 MS. DEMIROK: We have that much more. I'd say one -- two
2 more --

3 (Off the record at 3:05 p.m.)

4 JUDGE WEDEKIND: All set?

5 MS. DEMIROK: Yes.

6 JUDGE WEDEKIND: Okay. Let's go back on the record.

7 Q BY MS. DEMIROK: I'm handing you what's been marked as GC
8 Exhibit 12(a), Mr. Vaivao.

9 MS. DEMIROK: And I've also handed Respondent's counsel
10 what's been marked as 12B.

11 Q BY MS. DEMIROK: And we talked earlier about a meeting you
12 had attended on April 29th, 2015. Do you remember talking
13 about that?

14 A Correct, yes.

15 Q And this is a meeting where Mark Engdahl conducted most of
16 the meeting; is that right?

17 A Yes.

18 (Audio played at 3:23 p.m.)

19 Q BY MS. DEMIROK: Did you recognize that voice?

20 A Yes. Sounds like Steve Phipps.

21 Q And that was at the beginning of the recording into ten
22 seconds.

23 (Audio played at 3:23 p.m.)

24 Q BY MS. DEMIROK: Do you recognize that voice, Mr. Vaivao?

25 A Yes, ma'am.

1 Q And who was that?

2 A Sounded like Mark Engdahl.

3 MS. DEMIROK: And let the record reflect we have just
4 stopped at two minutes and 17 seconds. The meeting began at
5 two minutes and 10 seconds.

6 Q BY MS. DEMIROK: And Mr. Vaivao, if I could direct your
7 attention to page 2 of GC Exhibit Number 12(a).

8 (Audio played at 3:26 p.m.)

9 Q BY MS. DEMIROK: Whose voice was that throughout?

10 A That sounds like Mark Engdahl.

11 Q And is that an accurate representation of the meeting?

12 A I have no reason to say no.

13 Q Now, this meeting wasn't very long, was it?

14 A I don't think this meeting was very long, no.

15 Q So I'm going to go towards the middle of the meeting. And
16 we're at six minutes and five seconds.

17 (Audio played at 3:29 p.m.)

18 Q BY MS. DEMIROK: And if I could direct your attention,
19 Mr. Vaivao, it's page number 4, line number five.

20 (Audio played at 3:29 p.m.)

21 Q BY MS. DEMIROK: And, Mr. Vaivao, was that an accurate
22 representation of what was said during this meeting?

23 A I have no reason to dispute it.

24 Q And whose voice was that?

25 A It sounds like Mark Engdahl.

1 (Audio played at 3:31 p.m.)

2 MS. DEMIROK: I'm just going to let the record reflect
3 this is at 10 minutes and 10 seconds where it ended.

4 Q BY MS. DEMIROK: And, Mr. Vaivao, if I could direct your
5 attention to page 6, line 2. And do you know whose voice that
6 we were just listening to?

7 A I believe that just sounds like Mark's.

8 (Audio played at 3:31 p.m.)

9 Q BY MS. DEMIROK: Mr. Vaivao, the voice that we just heard,
10 do you recognize that voice?

11 A That sounds like Jerry Kropman.

12 Q Okay. And so -- and what he just said was, "I just -- I
13 just want to cover what's going on." Do you see that on page
14 6 --

15 MR. DAWSON: Your Honor, if we --

16 Q BY MS. DEMIROK: -- line 18?

17 MR. DAWSON: -- I'm sorry. If we could just object. I
18 mean, I don't know that it's an objection, but the transcript
19 identifies it as Ivan speaking.

20 MS. DEMIROK: That's correct.

21 MR. DAWSON: It sounds like that may be erroneous.

22 MS. DEMIROK: I was going to try to point it out.

23 JUDGE WEDEKIND: Sure, go ahead.

24 MS. DEMIROK: Yeah.

25 Q BY MS. DEMIROK: So who does it say is indicated as --

1 A It says my name on there --

2 Q Your name.

3 A -- but I was going to point that out.

4 Q But that was actually Mr. Kropman?

5 A Yes.

6 MS. DEMIROK: And so, we're at 11 minutes and 15 seconds
7 in the recording. The entire recording is 19 minutes and 9
8 seconds, and I think it might be a good thing if we go through
9 here and make sure we have the right voices throughout.

10 (Audio played at 3:34 p.m.)

11 Q BY MS. DEMIROK: And who was the last voice that you just
12 heard?

13 A It sounds like Mark Engdahl.

14 Q Mark Engdahl. And if I could direct your attention to
15 page 7, line 8. Is that an accurate representation?

16 A I have no reason to say no.

17 Q Okay.

18 (Audio played at 3:35 p.m.)

19 Q BY MS. DEMIROK: And so this voice again was?

20 A And that's -- it sounds like Jerry Kropman again.

21 Q Jerry Kropman.

22 MS. DEMIROK: That's at 12 minutes and 15 seconds.

23 Q BY MS. DEMIROK: And, again, if I could direct your
24 attention to page 7, line 13. Is that where Mr. Kropman
25 started speaking where it's identified as you were speaking?

1 A Yes.

2 (Audiotape played at 3:36 p.m. and ended at 3:38 p.m.)

3 Q BY MS. DEMIROK: Do you recognize that voice?

4 A That sounds like Nick.

5 Q Okay. And so, I want to direct your attention to page 8,

6 line 18, where it says "unidentified male." Would it be --

7 what's listed after -- starting at line 18, is that your voice
8 beginning?

9 A Yes.

10 MS. DEMIROK: And we're at 14 minutes and 11 seconds in
11 the recording.

12 (Audio played at 3:38 p.m.)

13 MS. DEMIROK: Now, according to the transcript, the same
14 person speaks for a while, so I'm going to go towards the end
15 of that and make sure that we're still at the -- with the same
16 speaker.

17 (Audio played at 3:40 p.m.)

18 Q BY MS. DEMIROK: And, Mr. Vaivao, if I could direct your
19 attention to page 10, line 17. What we just heard was that
20 your voice still?

21 A Sounds like me, yes.

22 Q And looking at this last paragraph on page 10, is that an
23 accurate representation of what you heard so far?

24 A I have no reason to say it's not me.

25 Q Okay.

1 (Audio played at 3:41 p.m.)

2 Q BY MS. DEMIROK: And whose voice was that?

3 A It sounds like Mark Engdahl.

4 Q And does the transcript look accurate as far as when Mark
5 Engdahl began speaking?

6 A Yes.

7 MS. DEMIROK: And right now, we're at 18 minutes and 33
8 seconds.

9 Q BY MS. DEMIROK: And did you recognize the voice of the
10 other person who spoke during that?

11 A I don't recognize the name. That was pretty quick. I
12 don't recognize the voice.

13 (Audio played at 3:42 p.m.)

14 Q BY MS. DEMIROK: Is that an accurate representation of the
15 end of the meeting?

16 A It sounds like it.

17 MS. DEMIROK: Your Honor, at this time General Counsel
18 would like to move provisionally to enter Exhibit -- what's
19 been marked as GC Exhibit 12(a) and 12(b) into the record.

20 JUDGE WEDEKIND: The same response?

21 MR. DAWSON: Provisional, yeah. Yes, Your Honor.

22 JUDGE WEDEKIND: They're admitted provisionally.

23 **(General Counsel Exhibit Numbers 12(a) and 12(b) Received into**
24 **Evidence)**

25 Q BY MS. DEMIROK: And, Mr. Vaivao, I'm handing you what's

1 been marked as GC Exhibit number 13(a), and I'm also handing
2 Respondent's counsel what's been marked as GC Exhibit 13(b).
3 Now, we talked about an incident that happened on May 5th. Do
4 you remember that?

5 A Yes.

6 Q And this was an incident where Mario Lerma met with you
7 and Mr. Engdahl in Mr. Engdahl's office.

8 A Yes.

9 Q And you testified earlier that this was a fairly short
10 meeting; is that right?

11 A As I understand it, yes.

12 MS. DEMIROK: I think it might be appropriate to start at
13 the beginning and go through the end of this one, and we'll
14 stop to identify the voices along the way.

15 (Audio played at 3:46 p.m.)

16 Q BY MS. DEMIROK: Did you recognize that voice?

17 A It sounds like Mario Lerma.

18 Q Okay.

19 JUDGE WEDEKIND: Which one?

20 MS. DEMIROK: Good question.

21 Q BY MS. DEMIROK: And if I could direct your attention to
22 page number 2 of GC Exhibit Number 3(a). Starting at line 1,
23 is that -- is the first speaker who is unidentified, is -- was
24 that who you were referring to as Mario Lerma?

25 A Yeah. It sounds like Mario Lerma

1 (Audio played at 3:47 p.m.)

2 Q BY MS. DEMIROK: Okay. Mr. Vaivao, could you help us out
3 here? Did you recognize both of those voices?

4 A Yes.

5 Q And I'm going to direct your attention to page 2, line
6 six. Do you who said that line at that unidentified --

7 A That -- I don't recognize that voice. Could -- I know at
8 line 9 it sounds like -- it sounds like that was me.

9 Q Okay. And then the person who responded?

10 A It sounds like Mario.

11 Q Okay.

12 MS. DEMIROK: And we're at one minute and 35 seconds.

13 (Audio played at 3:49 p.m.)

14 Q BY MS. DEMIROK: And do you recognize that voice?

15 A Yes.

16 Q And who was that?

17 A It sounds like Mark Engdahl.

18 Q And is that correctly identified in the transcript?

19 A Yes

20 (Audio played at 3:49 p.m.)

21 Q BY MS. DEMIROK: Mr. Vaivao, I want to direct your
22 attention page 4. Have you been following along as we
23 listened?

24 A Yes.

25 Q And has it been an accurate representation as far as who

1 was saying what?

2 A I have no reason to say no.

3 Q Okay.

4 (Audio played at 3:53 p.m.)

5 Q BY MS. DEMIROK: And whose voice was that?

6 A It sounds like -- it sounds like me.

7 Q Okay.

8 A Yeah.

9 Q I want to direct your attention to page 7, line 9. And
10 where it says, "Unidentified Male," is that -- is that where
11 you've just identified it basically being your voice?

12 A Yep.

13 Q And so far is -- what you're hearing, is that an accurate
14 representation of what happened at that meeting?

15 A It sounds like it, yes.

16 (Audio played 3:56 p.m.)

17 Q BY MS. DEMIROK: Mr. Vaivao, I want to direct your
18 attention to page 8. Have you been following along --

19 A Yes.

20 Q -- on this page? And so far has this been an accurate
21 representation on this page of what's --

22 A No reason --

23 Q -- been referred?

24 A -- to say no.

25 MS. DEMIROK: And right now we're at nine minutes and 33

1 seconds.

2 (Audio played at 3:58 p.m.)

3 Q BY MS. DEMIROK: So, Mr. Vaivao, was that an accurate
4 representation of the end of the meeting?

5 A No reason to say no.

6 Q And it was an accurate representation of the beginning of
7 the meeting?

8 A Sounds like it, yes.

9 Q And all through the middle?

10 A (No verbal response).

11 MS. DEMIROK: And I stopped for the record at 14 minutes
12 and 26 seconds. The recording only goes to 14 minutes and 34
13 seconds.

14 JUDGE WEDEKIND: Just for the record, I think I did notice
15 something said that was not on the transcript.

16 MS. DEMIROK: Oh, you did?

17 JUDGE WEDEKIND: And that was on page 6, line 24. And I
18 just say it on the record so I don't forget.

19 MS. DEMIROK: Page 6, line 24?

20 JUDGE WEDEKIND: Right. Where he said somebody could
21 perceive it intimidation or threat or something. That's what I
22 heard. And I don't see or threat in -- you can check it out.
23 I may be wrong. That's the only thing I noticed. It may be a
24 transcribing error, you know, that happens.

25 MS. DEMIROK: Yeah. Your Honor, at this time, General

1 Counsel would move to admit GC Exhibit Numbers 13(a) and 13(b)
2 provisionally.

3 JUDGE WEDEKIND: The same?

4 MR. DAWSON: Provisionally, yeah, thank you.

5 JUDGE WEDEKIND: They're admitted provisionally.

6 **(General Counsel Exhibit Number 13(a) and 13(b) Received into**
7 **Evidence)**

8 Q BY MS. DEMIROK: Mr. Vaivao, you testified earlier that
9 you were -- that you had discussed pen throwing and that was
10 what was being referred to.

11 A Right. As -- I testified to that. It's my recollection
12 that I thought I said that, yeah.

13 MS. DEMIROK: Your Honor, if I could take a moment off the
14 record just to make sure that I've covered all my bases.

15 JUDGE WEDEKIND: Is that going to be the end of it, you
16 think, unless you --

17 MS. DEMIROK: I think so. There might be a few follow-up
18 questions, but --

19 JUDGE WEDEKIND: Okay. Let's go off for a few minutes.
20 (Off the record at 4:05 p.m.)

21 MS. DEMIROK: Mr. Vaivao, thank you. I have no further
22 questions.

23 THE WITNESS: Thanks.

24 JUDGE WEDEKIND: What do you want to do?

25 MR. DAWSON: Your Honor, I have -- I only have one

1 follow-up question and if it's okay with Your Honor, that I
2 reserve Mr. Vaivao will be called as part of our case in chief
3 provided there's no objection. I just have one question.

4 JUDGE WEDEKIND: Okay.

5 **CROSS-EXAMINATION**

6 Q BY MR. DAWSON: Ivan, you had testified I think on your --
7 initially I think this was yesterday that there are 280
8 employees in the warehouse. If you included the drivers, what
9 would that do to that number?

10 A There's another additional 250. So about 530, 550.

11 Q Okay.

12 MR. DAWSON: No further questions.

13 MS. DEMIROK: Nothing on redirect.

14 JUDGE WEDEKIND: Thank you very much.

15 THE WITNESS: Sure.

16 JUDGE WEDEKIND: Sounds like we're going to see you again.

17 THE WITNESS: Thank you, sir.

18 JUDGE WEDEKIND: You're not quite out of here yet. All
19 right. Thanks for your testimony.

20 THE WITNESS: Thanks.

21 JUDGE WEDEKIND: You were on a long time. I don't know if
22 counsel informed you, but we do have something called a
23 sequestration order. It means that you cannot discuss your
24 testimony with any other witness or potential witness in this
25 proceeding until it's over.

1 THE WITNESS: Yes, sir.

2 JUDGE WEDEKIND: Okay.

3 THE WITNESS: Yes, sir.

4 JUDGE WEDEKIND: So, off the record.

5 **(Whereupon, the hearing in the above-entitled matter was**

6 **recessed at 4:10 p.m. until Friday, September 11, 2015 at 9:00**

7 **a.m.)**

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 28, Case Number

4

28-CA-150157, Shamrock Foods Company and Bakery, Confectionary,

5

Tobacco Workers' and Grain Millers International Union, Local

6

Union No. 232, AFL-CIO-CLC and at the National Labor Relations

7

Board, Region 28, 2600 North Central Avenue, Suite 1400,

8

Phoenix, Arizona 85004, on Thursday, September 10, 2015, at

9

1902 a.m. was held according to the record, and that this is

10

the original, complete, and true and accurate transcript that

11

has been compared to the reporting or recording, accomplished

12

at the hearing, that the exhibit files have been checked for

13

completeness and no exhibits received in evidence or in the

14

rejected exhibit files are missing.

15

16

17



18

JENNIFER GEROLD

19

Official Reporter

20

21

22

23

24

25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 11, 2015

Pages: 328 through 478

Volume: 4

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

SHAMROCK FOODS COMPANY,

and

BAKERY, CONFECTIONERY,
TOBACCO WORKERS' AND GRAIN
MILLERS INTERNATIONAL UNION,
LOCAL UNION NO. 232, AFL-CIO-
CLC

Case No. 28-CA-150157

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004, on **Friday, September 11, 2015, at 9:03 a.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****SARA DEMIROK, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Tel. 602-640-2126
Fax. 602-640-2178

ELISE F. OVIEDO

NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, NV 89101
Tel. 702-388-6211
Fax. 702-388-6248

On behalf of the Respondent:**TODD A. DAWSON, ESQ.**

BAKER & HOSTELLER, LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Tel. 216-861-7652
Fax. 216-696-0740

NANCY INESTA, ESQ.

BAKER & HOSTELLER, LLP
116011 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Tel. 310-442-8833
Fax. 310-820-8859

On Behalf of the Union:**ALAN G. CROWLEY, ESQ.****DAVID A. ROSENFELD, ESQ.**

WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
William McClelland	332				
Natalie Wright	359				
Robert Beake	424				
Michael Wizner	451	467			

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-14	358	3568
GC-15 (a) and 15 (b)	402	402
GC-16	453	453
GC-17	456	456
GC-18	457	457
GC-19	459	459
GC-20	460	460
GC-21	462	462
GC-22	464	464
GC-23	475	475

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: All right. This is the fourth day of
3 hearing in the Shamrock Foods case.

4 General Counsel, would you like to call your next witness?

5 MS. DEMIROK: We would. Counsel for the General Counsel
6 calls Kent McClelland.

7 JUDGE WEDEKIND: Mr. McClelland, good morning. Can you
8 raise your right hand for me.

9 Whereupon,

10 WILLIAM K. MCCLELLAND

11 having been duly sworn, was called as a witness herein and was
12 examined and testified as follows:

13 JUDGE WEDEKIND: Please, would you spell you name for us?

14 THE WITNESS: Kent -- it's actually William Kent, W-I-L-L-
15 I-A-M K-E-N-T M-C-capital C-L-E-L-L-A-N-D.

16 JUDGE WEDEKIND: Do you go by Kent or William?

17 THE WITNESS: Go by Kent.

18 JUDGE WEDEKIND: Okay, thanks.

19 DIRECT EXAMINATION

20 Q BY MS. DEMIROK: Okay. Good morning --

21 A Good morning.

22 Q -- Mr. McClelland. So my name is Sara Demirok, who -- we
23 met real briefly before. I'm an attorney for the federal
24 government. I'm going to be asking you some questions.

25 A Yes.

1 Q Did you review any documents in preparation for your
2 testimony today?

3 MR. DAWSON: Objection to the extent with counsel.

4 THE WITNESS: Yes.

5 JUDGE WEDEKIND: Okay. We haven't gotten there yet.
6 Overruled for now.

7 Q BY MS. DEMIROK: Did you review any documents in
8 preparation of your testimony today?

9 A No.

10 Q Did you discuss your testimony with anyone in preparation
11 for your testimony today?

12 MR. DAWSON: Objection. Don't answer that to the extent
13 with counsel.

14 JUDGE WEDEKIND: I think she's entitled to ask whether the
15 witness discussed his testimony with anyone, including counsel.
16 The attorney-client privilege only protects the actual
17 communications between client and counsel. So can you answer
18 the question, whether you discussed -- what was the question --
19 with --

20 Q BY MS. DEMIROK: Did you discuss your testimony with
21 anyone in preparation for your testimony today?

22 A With counsel.

23 Q Are you currently employed?

24 A I am.

25 Q And where are you employed?

1 A Shamrock Foods Company.

2 Q In what position?

3 A President and CEO.

4 Q And how long have you been in that position?

5 A I've been in that position for three years.

6 Q Who was in that position before you?

7 A My father.

8 MS. DEMIROK: Your Honor, at this time, I'm requesting to
9 continue my questioning, where appropriate, under Rule 611(c)
10 of the Federal Rules of Evidence.

11 JUDGE WEDEKIND: Any objection?

12 MR. DAWSON: No objection.

13 MS. DEMIROK: Thank you, Your Honor.

14 Q BY MS. DEMIROK: Now in your position, you oversee both
15 divisions at Shamrock; isn't that right?

16 A Which divisions are you referring to?

17 Q There are two divisions at Shamrock; is that right?

18 A There is a dairy division and there is a foods division,
19 yes. And I oversee both.

20 Q That was going to my next question. There is a
21 distribution division at Shamrock; isn't that right?

22 A There is a food distribution that's one part of that
23 particular division, yes.

24 Q And in the foods distribution division, there's a
25 distribution warehouse in Phoenix, Arizona; is that right?

1 A There is.

2 Q And you oversee that distribution center, don't you?

3 A No, I don't. I oversee the company. Other folks oversee
4 that particular division.

5 Q But isn't that warehouse part of the foods distribution
6 division?

7 A It rolls up to me, yes.

8 Q And which you oversee, right?

9 A I oversee the division not the specifics of a particular
10 distribution center.

11 Q So you don't oversee what happens over there?

12 A I don't oversee it directly, no.

13 Q But I didn't ask if you oversaw it directly, just if you
14 oversee it at all.

15 A I don't --

16 MR. DAWSON: Objection, Your Honor.

17 THE WITNESS: I don't understand the question.

18 JUDGE WEDEKIND: Maybe you should rephrase it.

19 Q BY MS. DEMIROK: Well, in overseeing the whole division,
20 the food distribution division, that includes the one in
21 California; is that right?

22 A The foods division includes many divisions and branches,
23 what we call branches, which would include Arizona and
24 California.

25 Q Well, let's talk about the distribution centers. Those

1 are part of the distribution division, right?

2 A Those are part of the branches, yes.

3 Q Which are part of the division; is that right?

4 A They are.

5 Q And there are several distribution centers; is that right?

6 A There are.

7 Q There's one in Phoenix; is that right?

8 A There is.

9 Q There's one in California; is that right?

10 A There is.

11 Q And there's one --

12 A There actually are -- there's more than one in California.

13 Q And there's one in Colorado; is that right?

14 A There's one in -- there's more than one in Colorado.

15 Q And there's at least one in New Mexico, right?

16 A Yes.

17 Q And in your position as overseeing all of the division,
18 those are all part of the division; is that right?

19 A Those all are part of the foods company, the foods
20 division within Shamrock Foods Company.

21 Q And which you oversee, right?

22 A And oversee the broader spectrum of things. And I have
23 managers that oversee the individual branches.

24 Q Because you can't do it all, can you?

25 A I hope not.

1 Q And you also oversee the dairy division; is that right?

2 A In the same way I would oversee the foods divisions.

3 There are people that run that particular division for us,
4 yeah, that report to me.

5 Q In your light of work, you meet with a lot of managers,
6 don't you?

7 A We have lots of meetings.

8 Q Including the managers who work for you; is that right?

9 A Including the managers who work directly for me.

10 Q And that would include the managers who work at the
11 Phoenix warehouse; is that right?

12 A That would actually include, primarily, the branch
13 manager.

14 Q And who is that?

15 A Randy McClanahan. And he would be direct -- he would be
16 reporting up through John Roussel, who is our COO. And he
17 reports to me. So that would be the line of communication.

18 Q And who reports to Randy?

19 A Randy would have, primarily, the sales marketing.

20 Q So why don't we go through the hierarchy at the Phoenix
21 warehouse? I'm sure you're familiar with that, right?

22 A I am.

23 Q So why don't we start at the bottom with -- would Ivan
24 Vaivao, would he be near the bottom of that hierarchy?

25 A He would be a supervisor, a manager for part of the

1 operation, yeah.

2 Q And who does he report to?

3 A He reports to Jerry Kropman.

4 Q And who does he report to?

5 A He would report to Mark Engdahl.

6 Q And who does he report to?

7 A He reports to me.

8 Q So he reports to you, right?

9 A He reports to me, yes.

10 Q Because you didn't mention that earlier, did you?

11 MR. DAWSON: Objection, Your Honor.

12 JUDGE WEDEKIND: Overruled.

13 THE WITNESS: We have a structure within Shamrock which
14 has central services on operations, falls within that. And so,
15 Mark Engdahl is part -- runs all of operations for all of
16 Shamrock Foods Company. So he is responsible for all the
17 operational elements within Shamrock.

18 Q BY MS. DEMIROK: Including the Phoenix warehouse, right?

19 A Including the Phoenix warehouse.

20 Q And your office isn't located at the Phoenix warehouse, is
21 it?

22 A It is not.

23 Q And where is your office in relation to the Phoenix
24 warehouse?

25 A It's about 30 minutes.

1 Q Is that your only office?

2 A Yes.

3 Q Now the managers who oversee the Phoenix warehouse, they
4 have offices at the Phoenix warehouse, right?

5 A Some of them do, yes.

6 Q And you keep in contact with them via email; is that
7 right?

8 A I do not contact them. Typically, I contact -- most of my
9 communication would be through Mark Engdahl.

10 Q And where's his office?

11 A His is at corporate, where our offices are.

12 Q And you keep in contact with him via email?

13 A I talk with him. I also email him.

14 Q Do you text message with him?

15 A Rarely.

16 Q Did you review any emails from any of the Phoenix
17 managers, including Mark Engdahl, in preparation of your
18 testimony today?

19 A No.

20 Q Were you asked to produce any of those emails for
21 production to the General Counsel?

22 A No.

23 Q Does Mr. Engdahl have a company cellphone?

24 A He does.

25 Q Do any of the other managers?

1 A I don't know. I imagine they do.

2 Q You mentioned that you get text messages.

3 A No, I did not.

4 Q You said once in a while, not many.

5 A You asked whether I got text messages from Mark Engdahl,
6 and I said rarely.

7 Q Rarely.

8 A Yes.

9 Q So you have received at least one?

10 A That I can recall.

11 Q Was that a yes or a no?

12 A Yes.

13 Q And did you review that text message or any others from
14 him in preparation of your testimony today?

15 A No.

16 Q Were you asked to produce any of those text messages, the
17 -- to the --

18 A No.

19 Q -- General Counsel?

20 JUDGE WEDEKIND: Let me just caution. Since we're
21 recording, try to wait until the answer is done before you
22 answer.

23 THE WITNESS: Okay.

24 JUDGE WEDEKIND: Until the question is done before you
25 answer.

1 THE WITNESS: Will do.

2 JUDGE WEDEKIND: thank you.

3 Q BY MS. DEMIROK: Do you ever go to the Phoenix warehouse?

4 A I do.

5 Q And I suppose when you go there, you meet with managers
6 over there; is that right?

7 A Typically, what we have would be meetings where we need
8 larger meeting space. And that particular facility has larger
9 meeting spaces. So we go there and use the space.

10 Q Because there's conference rooms there, right?

11 A There are conference room.

12 Q And you've been in those rooms before, haven't you?

13 A I have.

14 Q Now in your line of work, you deal with a lot of
15 production issues, don't you?

16 A I deal with a lot of issues.

17 Q Well, that would go to my next question. But you do deal
18 with production issues, don't you?

19 A In what sense do you mean production issues?

20 Q Well, you produce dairy products in your -- with your
21 company; is that right?

22 A Our dairy division produces dairy products.

23 Q And you also have a meat plant that's attached to the
24 Phoenix warehouse; is that right?

25 A We do.

1 Q And so, in your line of work, you deal with production
2 issues, don't you?

3 A In my line of work, production issues come up, some of
4 which I may have to deal with.

5 Q What other types of issues do you have to deal?

6 A At my level, what comes to me are generally issues of
7 strategy, of policy, growth, expansion, things of that nature.

8 Q And in that regard, is it pretty fair to say that you're
9 pretty hands-on in dealing with those issues?

10 MR. DAWSON: Objection, Your Honor. That's pretty
11 abstract.

12 JUDGE WEDEKIND: Overruled. It's a common term.

13 THE WITNESS: I don't know what you mean by hands on.
14 What I do is I interact frequently with my direct reports on
15 the issues that are important to them and to us, along the
16 lines of what I described earlier.

17 Q BY MS. DEMIROK: You like to think of your company as a
18 family; isn't that right?

19 A We are a family-owned company, yes.

20 Q How many employees do you have?

21 A Around 3500.

22 Q The company holds meetings with employees from time to
23 time; isn't that right?

24 A We do.

25 Q And one of these meetings was held on March 31st, 2015;

1 isn't that right?

2 A I don't know what meeting you're referring to. So I can't
3 respond. We have meetings every day.

4 Q Do you know if there was a meeting with employees on March
5 31st, 2015?

6 A I don't.

7 Q The company has, I'm not sure what you would call it, but
8 state of the company addresses every once in a while; is that
9 right?

10 A What we have is an informational meeting once a year,
11 where we talk about where the company is. That generally
12 happens around January, in the January timeframe. And that's
13 also the time when we talk about our profit sharing.

14 Q And the Phoenix warehouse employees went to one of these
15 meetings this year, didn't they?

16 A We have meetings throughout the company for all employees.
17 So they would include anyone who was a part of that branch.
18 There are meetings set up throughout the day to accommodate
19 different schedules.

20 Q Is that a yes or a no?

21 A That means that we have meetings that included all of our
22 employees from all of the Phoenix branch, and that would
23 include people in the warehouse, people in distribution, people
24 in transportation, people in administration, accounting,
25 purchasing, all areas.

1 Q So the Phoenix warehouse employees attended a meeting in
2 which you addressed the state of the company this year; is that
3 right?

4 A Whether I was at the meeting or not --

5 Q That wasn't my question.

6 A Well --

7 MR. DAWSON: Your Honor, she asked him if he -- when --
8 where he presented the state of the company. That was kind
9 of --

10 MS. DEMIROK: That's not what my question was.

11 JUDGE WEDEKIND: I thought the question was fairly clear,
12 and I wasn't convinced the answer was going to be responsive.
13 So I'm going to overrule the objection.

14 Can you answer the question? Or if you don't understand
15 it --

16 THE WITNESS: Well, what I can answer is that I was at
17 some of the informational -- the state of the company meetings.
18 I don't know whether that specific one I was there. For the
19 ones that I was not at, we -- my father and I made a recording
20 of our message, and that was included.

21 Q BY MS. DEMIROK: Excuse me. I was asking if the Phoenix
22 warehouse employees attended such a meeting this year.

23 A Yes, they did.

24 Q Thank you.

25 JUDGE WEDEKIND: But just to clarify, is it just one

1 meeting or are there several meetings at the Phoenix warehouse
2 for this particular subject?

3 THE WITNESS: There would probably be three or four which
4 they could attend, depending on their schedules.

5 JUDGE WEDEKIND: Okay, very well. Now are you saying you
6 didn't attend all three or four or you did?

7 THE WITNESS: I did not.

8 JUDGE WEDEKIND: Okay.

9 THE WITNESS: To my knowledge, I did not. I would have to
10 go back and look at my calendar --

11 JUDGE WEDEKIND: Okay.

12 THE WITNESS: -- to see which ones I did.

13 Q BY MS. DEMIROK: This year you created a video --

14 A We did.

15 Q -- for that meeting, didn't you?

16 A Yes, we did.

17 Q Because you didn't attend that meeting, did you?

18 A I don't know which meeting you're referring to, because we
19 had several that day. So --

20 Q Did you attend any that day?

21 A I don't know. I don't recall.

22 Q Do you recall if you were at the warehouse at all that
23 day, March 31st, 2015?

24 A March 31st, I don't recall where I was that day.

25 Q If there was a video message from you, would that indicate

1 that you weren't at that meeting?

2 A Yes. If there was a video recording, it would be because
3 we could that, my father or I could not attend.

4 Q Because you're pretty busy, right?

5 A My day is pretty full, yes.

6 Q Now Shamrock has a human resources department, doesn't it?

7 A We do.

8 Q And Natalie Wright works in that department; is that
9 right?

10 A She does.

11 Q Do you know what her position is?

12 A I don't.

13 Q You don't?

14 A I don't know specifically the title of her position.

15 Q Do you know who she reports to?

16 A I don't.

17 Q Do you know who reports to her?

18 A I don't.

19 Q Who's the director of that department?

20 A The senior vice-president for human resources is Bob
21 Beake.

22 Q Who reports to him?

23 A Oh, boy. I think his -- he has several reports, depending
24 on the area of human resources. So Karen reports to him and
25 Vince Daniels. I'm trying to think who else. Branch Muller,

1 who is in charge of safety and that sort of thing.

2 Q And who does Mr. Beake report to?

3 A He reports to me.

4 JUDGE WEDEKIND: Who is Karen?

5 THE WITNESS: Karen Williams. Sorry.

6 JUDGE WEDEKIND: Oh.

7 Q BY MS. DEMIROK: Now the HR department has the authority
8 to make hiring decisions, doesn't it?

9 A It does.

10 Q And without your final approval, right?

11 A Yes.

12 Q And the HR department can also transfer employees to
13 different departments; is that right?

14 A They're responsible for all of the HR functions, which
15 would include staffing. And that would mean whatever is
16 necessary for staffing, including transfers.

17 Q And they can do all of that without your final approval,
18 right?

19 A There are very few things that have my approval -- that
20 need my approval. Senior level people being hired, that's what
21 I'm responsible for. C level people and probably their direct
22 reports would be something I would get involved with. Beyond
23 that, no.

24 Q Okay. And the same goes for firing employees, right?

25 A Yes.

1 Q Because you employ thousands of employees, right?

2 A Yes, we do.

3 Q Let's go back to a few things. You testified earlier that
4 your office isn't located at the warehouse, right?

5 A Yes.

6 Q And you also testified that you do go to the warehouse on
7 occasion; isn't that right?

8 A I did.

9 Q When was the last time you were there?

10 A We had a meeting I think sometime in the middle of August.

11 Q Were you meeting with managers?

12 A Yes.

13 Q Do you ever meet with managers over there in a group, more
14 than one manager at a time?

15 A We do.

16 Q And you could meet with them for all kinds of reasons;
17 isn't that right?

18 A Any number of reasons, yes.

19 Q Could you give us an example? Why did you meet with them
20 the last time you were at Phoenix warehouse?

21 A Every quarter --

22 MR. DAWSON: Objection, Your Honor.

23 JUDGE WEDEKIND: There's an objection.

24 THE WITNESS: Sorry.

25 MR. DAWSON: Relevance.

1 JUDGE WEDEKIND: The question was?

2 MS. DEMIROK: I just want him to give us an example of why
3 he would meet with managers at the warehouse, and I asked for
4 an example. He can give me a different example, but I was
5 wondering why he met with managers the last time.

6 JUDGE WEDEKIND: Do you want to explain the relevance with
7 the witness on the stand or not? Can you explain the
8 relevance?

9 MS. DEMIROK: The relevance?

10 JUDGE WEDEKIND: Of the question.

11 MS. DEMIROK: Well, I want to show -- well, I would prefer
12 not to have him on the stand while --

13 JUDGE WEDEKIND: Yeah. I'm going to overrule the
14 objection for now. It's one question. I'm not convinced that
15 it's out of bounds. Go ahead.

16 Q BY MS. DEMIROK: So could you give us an example of why
17 you would meet with managers at the Phoenix warehouse?

18 A Yes. As I explained earlier, we need meeting space that's
19 not -- we don't have adequate meeting space in our corporate
20 offices. And so, we use the -- not the warehouse space, but we
21 use the office space, which includes the auditoriums in that
22 facility. And we had a meeting where we had a quarterly review
23 of our performance.

24 Q Do you remember meeting with some managers at the Phoenix
25 warehouse sometime in April 2015?

1 A I do not.

2 Q Before August, which is when you said the last time you
3 met with managers over there, when was the most recent before
4 that time?

5 A I don't recall. I mean there are times when I go to
6 warehouse -- to those offices for meetings because it's
7 convenient to meet there with other managers, because the dairy
8 and that particular facility are close to one another. So it's
9 easy to go between one and the other for meetings. So I don't
10 recall what it would have been.

11 Q Which managers would be present when you gave them at the
12 warehouse?

13 A Again, in the offices within that facility. And it could
14 be any number of managers. As an example, for the quarterly
15 meeting, we have our senior level managers join us, some from
16 beyond Arizona, typically. So it would include people from
17 Colorado or California or other places.

18 Q Which is of the managers from the Phoenix warehouse would
19 that include?

20 A That would not include -- that might include Jerry
21 Kropman, but that's about it.

22 Q Would Mark Engdahl ever attend those meetings?

23 A He would.

24 Q Would Bob Beake ever be in any of those meetings?

25 A He would.

1 Q If it was related to human resources, right?

2 A In the specific question you asked me regarding the last
3 meeting, which I explained was a quarterly meeting --

4 Q Uh-huh.

5 A -- we're reviewing quarterly results, and our senior level
6 managers are there. So that would not be for a human resource
7 reason. It would be for a quarterly review reason that we
8 would be gathered.

9 Q But he's the director of the human resources department,
10 right?

11 A He's the senior vice-president of human resources.

12 Q Do you ever meet with any managers at the Phoenix
13 warehouse for reasons related to human resources?

14 A At the Phoenix warehouse?

15 Q Uh-huh.

16 A No. It would be meetings with Mark Engdahl, typically.

17 Q Are you familiar with Mr. Thomas Wallace?

18 A I've heard the name. I'm not -- I don't know the man.

19 Q Who decided to fire him?

20 A I don't know.

21 Q You have no idea?

22 A I don't know who decided to fire him.

23 Q So you didn't decide to fire him?

24 A I did not.

25 Q Why was he fired?

1 A I don't know the details.

2 Q So you're saying that, even as this case progressed, you
3 never learned why he was fired?

4 A I do not know the particulars of why he was fired.

5 Q What do you know about why he was fired?

6 A I know that he was fired.

7 Q And that's all you know?

8 A Yes.

9 Q Is that why you weren't going to show up and testify?

10 MR. DAWSON: Objection, Your Honor. That's a privileged
11 conversation with counsel in terms of whether or not he should
12 show up to testify, and he shouldn't answer that.

13 JUDGE WEDEKIND: I don't really even understand the
14 question. He was subpoenaed to testify?

15 MR. DAWSON: Yes, Your Honor. And he's here testifying.

16 JUDGE WEDEKIND: He's here, yeah.

17 THE WITNESS: Here I am.

18 JUDGE WEDEKIND: Sustained.

19 Q BY MS. DEMIROK: So just to be clear, you don't know
20 anything about why he was discharged, just that he was
21 discharged?

22 A That's correct.

23 Q And do you know who made the -- you don't know who made
24 the decision to fire him?

25 A I don't.

1 Q Who would typically make the decision to fire a warehouse
2 associate?

3 A That would be someone in HR.

4 Q Is Mr. Beake the only one that has final approval in HR on
5 discharging warehouse associates?

6 A No.

7 Q Would Natalie Wright have that authority?

8 A I don't know.

9 MS. DEMIROK: Your Honor, may I approach the witness?

10 JUDGE WEDEKIND: Yes.

11 Q BY MS. DEMIROK: Handing you what's been marked as GC
12 Exhibit Number 14. Do you recognize this document?

13 A I do.

14 Q Because that's your name at the bottom, right?

15 A It is.

16 Q And you sent this letter to all associates, right?

17 A No.

18 Q Who'd you send it to?

19 A We sent it to the operations folks at Arizona, at the
20 Arizona branch.

21 Q The operations folks, who are those people?

22 A Those would be people in the warehouse, in transportation
23 and related functions.

24 Q So all warehouse associates received this letter?

25 A That was the intent. I don't know if they did, but that's

1 who we sent it to.

2 Q You don't regularly send letters like this to warehouse
3 associates, do you?

4 A No, I don't.

5 Q But you had to send this one, didn't you?

6 A I chose to send it.

7 Q Because there were some concerns being raised about some
8 warehouse associates; isn't that right?

9 A As the letter states, some associates had been threatened.
10 And so -- by other associates. That's inconsistent with our
11 philosophy, our culture. And so, I felt it imperative to
12 respond.

13 Q And those employees, they raised concerns with their
14 supervisors, right?

15 A I don't know who raised the concerns with.

16 Q Do you know if they raised those concerns with Mr. Vaivao?

17 A I don't know.

18 Q How did you learn about those concerns?

19 A From our HR department.

20 Q Does that mean you learned from Mr. Bob Beake?

21 A I don't know who, specifically.

22 Q Did you receive any emails about those concerns?

23 A No.

24 Q How did you learn? In what medium?

25 A I imagine with any conversations.

1 Q Could it have been in a meeting with some of the managers

2 A I don't recall having a meeting with managers where these
3 concerns were raised.

4 Q Do you know if anyone filed a formal complaint with HR?

5 A I don't know.

6 Q Do you know the details of these concerns that employees
7 had?

8 A I don't know the details. I just knew that there were
9 some folks that felt threatened. And it's just not part of our
10 culture. And so, I'm simply reminding and reiterating what our
11 philosophy is, what our policies are. And if people feel
12 threatened by other associates and they feel like they need to
13 come forward, they have recourse to do so.

14 Q You don't know why they felt threatened, do you?

15 A I don't.

16 Q Wouldn't you want to find out before you sent this letter?

17 A I don't think it matters what the concerns were. If we
18 have associates coming to our HR department feeling that they
19 have to go to HR and saying I feel that I'm being subjected, as
20 the letter says, to threatening, violent, or unlawfully
21 coercive behavior from other associates, that's enough. That's
22 sufficient.

23 Q Do you know if they brought those concerns directly to HR?

24 A That's my understanding.

25 Q You're not sure about that, are you?

1 A That's my understanding from what my discussions with HR
2 were.

3 Q When you say your discussions with HR, who specifically
4 did you talk to?

5 A I don't recall.

6 Q This was the first letter that you sent to warehouse
7 associates in many years; isn't that right?

8 A I don't recall. We've had communications with all
9 associates many times over the years on many topics, that would
10 include the warehouse. So this kind of a communication is not
11 unusual.

12 Q You said we have communications. What about you
13 specifically? Do you have communication with the warehouse?

14 A I have communications.

15 Q When was the last time you sent them a letter prior to
16 this?

17 A Every quarter we send out a company newsletter to all
18 associates, and that includes a letter from me.

19 Q Aside from that, when was the last time you sent a letter
20 to associates?

21 A I don't recall.

22 Q Because it was quite a while ago, wasn't it?

23 A I don't recall when it was.

24 Q Do you recall what it would have been about?

25 A I don't remember.

1 MR. DAWSON: Asked and answered. I'm sorry. Asked and
2 answered. I believe the witness doesn't recall the last time
3 he sent it out, when it was or what it was.

4 JUDGE WEDEKIND: Overruled.

5 THE WITNESS: I don't recall what the content of my
6 communication would have been prior to this letter.

7 MS. DEMIROK: Your Honor, if I could just have a moment?

8 JUDGE WEDEKIND: Sure. Off the record.

9 (Off the record at 9:39 a.m.)

10 MS. DEMIROK: No further questions, Your Honor.

11 MR. DAWSON: Nothing from Respondent, Your Honor.

12 JUDGE WEDEKIND: Okay. Thank you, Mr. McClelland, for
13 coming.

14 THE WITNESS: Thank you.

15 JUDGE WEDEKIND: Now, anyway, you are free to go. We do
16 have a sequestration order in effect.

17 THE WITNESS: Right.

18 JUDGE WEDEKIND: Okay. So please don't --

19 THE WITNESS: Right.

20 JUDGE WEDEKIND: -- discuss your testimony with any other
21 witnesses or potential witnesses until this proceeding is over.

22 MS. DEMIROK: Oh. We would move to admit --

23 JUDGE WEDEKIND: You understand, until it's over? Could
24 be another --

25 THE WITNESS: Right. So --

1 JUDGE WEDEKIND: -- couple weeks. We don't know yet.

2 THE WITNESS: -- it would be --

3 JUDGE WEDEKIND: Right.

4 THE WITNESS: -- however long it takes, no discussions?

5 JUDGE WEDEKIND: Right. Right.

6 THE WITNESS: Great. Thank you.

7 JUDGE WEDEKIND: Sure.

8 Do you need the witness on the stand to move to admit
9 something?

10 MS. DEMIROK: Yes, I do.

11 MR. DAWSON: Actually, Your Honor, we won't object to the
12 admission.

13 JUDGE WEDEKIND: Of May 8th letter -- of the May 8th
14 letter?

15 MR. DAWSON: The General Counsel --

16 MS. DEMIROK: General Counsel would like to move to
17 admit --

18 JUDGE WEDEKIND: Okay.

19 MS. DEMIROK: -- GC Exhibit Number 14.

20 MR. DAWSON: No objection, Your Honor.

21 JUDGE WEDEKIND: Okay.

22 Do you still need the witness?

23 MS. DEMIROK: No.

24 JUDGE WEDEKIND: It's received.

25 **(General Counsel Exhibit Number 14 Received into Evidence)**

1 JUDGE WEDEKIND: Off the record for a minute.

2 (Off the record at 9:41 a.m.)

3 JUDGE WEDEKIND: Call your next witness.

4 MS. OVIEDO: Yes, Your Honor. Counsel for the General
5 Counsel calls Ms. Natalie Wright.

6 JUDGE WEDEKIND: Ms. Wright, have a seat. All right.
7 Good morning.

8 MS. WRIGHT: Good morning.

9 JUDGE WEDEKIND: Could you raise your right hand for me?
10 Whereupon,

11 **NATALIE WRIGHT**

12 having been duly sworn, was called as a witness herein and was
13 examined and testified as follows:

14 JUDGE WEDEKIND: Please, could you spell your first name
15 for us?

16 THE WITNESS: N-A-T-A-L-I-E.

17 JUDGE WEDEKIND: And your last name?

18 THE WITNESS: Wright, W-R-I-G-H-T.

19 JUDGE WEDEKIND: Great. Thank you very much.

20 **DIRECT EXAMINATION**

21 Q BY MS. OVIEDO: Good morning, Ms. Wright. How are you?

22 A Good, thank you.

23 Q Ms. name is Elise Oviedo. I'm an attorney with the
24 federal government. I'm going to be asking you some questions
25 today.

1 A Okay.

2 Q Have you reviewed any documents in preparation of your
3 testimony today?

4 A Any documents I've reviewed have been at the direction of
5 counsel.

6 MS. INESTA: I'm going to object to the extent it invades
7 the attorney-client privilege.

8 JUDGE WEDEKIND: Overruled.

9 Can you -- you want to know what documents she reviewed?

10 MS. OVIEDO: Yes, Your Honor.

11 THE WITNESS: Specifically, what type of documents? Could
12 you give me an example or --

13 Q BY MS. OVIEDO: You tell me. What did you review in
14 preparation for --

15 A In preparation.

16 Q -- your testimony today?

17 A I know I would have reviewed my calendar and any -- the
18 complaint made against me. That's about the extent of the
19 documents that I can recall that we've reviewed.

20 Q When you say calendar, is that an agenda book or a
21 calendar book, or is it your Outlook calendar?

22 A My Outlook calendar.

23 Q Okay.

24 MS. OVIEDO: And counsel would like to note that we didn't
25 receive any documents responsive to the subpoena regarding

1 that.

2 JUDGE WEDEKIND: What subpoena request was that?

3 MS. OVIEDO: Regarding when meetings -- certain meetings
4 were held.

5 JUDGE WEDEKIND: Okay.

6 Q BY MS. OVIEDO: Have you reviewed in recordings in
7 preparation for your testimony today?

8 A No, I have not.

9 Q Have you reviewed any transcripts in preparation of this
10 trial?

11 A No, I have not.

12 Q Have you spoken with anyone in cooperation with your
13 testimony today?

14 A Not other than --

15 MS. INESTA: Objection. Go ahead.

16 THE WITNESS: -- counsel.

17 JUDGE WEDEKIND: Overruled.

18 THE WITNESS: No.

19 Q BY MS. OVIEDO: With whom have you spoken?

20 A Only with counsel.

21 Q Who?

22 A With Nancy Inesta, our counsel.

23 Q Are you currently employed?

24 A Yes, I am.

25 Q And where are you currently employed?

1 A Shamrock Foods.

2 Q In what capacity?

3 A I am a human resources generalist or specialist.

4 Q And how long have you held that position?

5 A Since June of 2015.

6 Q Is that when you were first hired?

7 A No.

8 Q When were you first hired?

9 A February of 2013.

10 Q And what was your title at that time?

11 A Human resources manager.

12 Q And how long did you hold that position for?

13 A Until June of 2013.

14 Q Can you describe for us, please, the difference between
15 each positions?

16 A The human resources manager is -- the general
17 responsibilities are for -- at Arizona Foods is just being over
18 the general manager for that facility. As a generalist, I
19 report to the manager of that facility.

20 Q And who is that manager of that facility?

21 A Currently, it is Heather Vines-Bright.

22 Q And what's her title?

23 A Human resources manager.

24 Q Okay. And who does she report to?

25 A She reports to Monica Hergert, our HR director.

1 Q Okay. And where does Bob Beake fall into that hierarchy?

2 A She reports to Vince Daniels, our VP, and Vince Daniels
3 reports to Bob Beake.

4 Q Okay. Okay. Have you held any other positions at
5 Shamrock since those two?

6 A No.

7 Q Okay. Can you please describe for us your current duties
8 in your position?

9 A My current duties as an HR generalist, I'm part-time and
10 I'm responsible for some of the employee relations issues and
11 also some learning and development training and various
12 projects.

13 Q And who reports to you currently?

14 A I do not have any direct reports currently.

15 Q Okay. And when you were human resources manager, who
16 reported to you?

17 A I had an HR generalist and an HR coordinator.

18 Q And what were their names?

19 A Maggie Reed and Karla Reyes.

20 Q And is that respectively?

21 A Yes.

22 Q Okay. Who is James Allen?

23 A James Allen was an HR business partner.

24 Q And did he report directly to you?

25 A For a short time before my maternity leave, yes, he did.

1 Q An when did you go on maternity leave?

2 A March 24th, 2015?

3 Q What is a human resources business partner?

4 A It's the same as a HR generalist.

5 Q Why the difference in title then?

6 A It's just a title that's more conducive to our partnering
7 with our managers and our business as a partner versus just,
8 like I said, a generalist. So it's a name change in the
9 industry.

10 Q So what did -- how do his duties differ from those of a
11 generalist?

12 A They don't.

13 Q At all?

14 A At all.

15 Q Same exact thing?

16 A Yes.

17 Q Okay. Are there any other business partners before --
18 besides James Allen?

19 A We had hired another business partner for our dairy,
20 Tiffany Hawks. And there's others in other locations.

21 Q Do HR partners and business partners and HR generalists
22 make the same amount?

23 A Essentially, yes.

24 Q Essentially?

25 A Yes, they do.

1 Q You mentioned earlier that you were part-time.

2 A Correct.

3 Q So are all generalists part-time?

4 A No.

5 Q Okay. When you were still HR managers, and prior to June
6 2015, who did you report to?

7 A Monica Hergert.

8 Q And why the reason for your change in position?

9 A After I had -- after my maternity leave, I wanted to come
10 back part-time, so I could be at home with my child.

11 Q Okay. And who does Monica report to?

12 A She reports to Vince Daniels.

13 Q Has that always been the case?

14 A I think it made a change possibly back in December or
15 January.

16 Q Of this year? Or I'm sorry. Of 2014?

17 A Yes.

18 Q And who does Vince Daniels report to?

19 A Bob Beake.

20 Q Do you know why there was a change in late 2014 or early
21 2015?

22 A No, I don't.

23 MS. INESTA: Objection to the extent it calls for
24 speculation.

25 MS. OVIEDO: I asked her if she knew.

1 JUDGE WEDEKIND: Do you have any personal knowledge?

2 THE WITNESS: No.

3 JUDGE WEDEKIND: Okay.

4 Q BY MS. OVIEDO: Now that you're part-time, about how many
5 hours do you work a week?

6 A About 25 or less.

7 Q And when you were still HR manager, how many hours a week
8 did you work?

9 A Approximately 50.

10 Q Did you have a regular schedule at that time?

11 A Typically, 7:30 to whenever the job was done.

12 Q Okay. And I'm sorry. Maybe you already answered this.

13 How many people did you have under you when you were still HR
14 manager?

15 A For the most part, it was two, and then we hired a third.
16 So we had --

17 Q Can you tell us the names of those people?

18 MS. INESTA: Asked and answered.

19 Q BY MS. OVIEDO: Were those James Allen -- who else?

20 JUDGE WEDEKIND: Overruled. Go ahead.

21 THE WITNESS: So James Allen, he came on. I had Tiffany
22 Hawks.

23 Q BY MS. OVIEDO: Uh-huh.

24 A Maggie Reed for a time, and Karla Reyes.

25 Q And while you were still HR manager, what were their

1 positions?

2 A Maggie Reed was an HR generalist. When she left, we hired
3 Tiffany Hawks. She is an HR business partner. We hired James
4 Allen, HR business partner, and Karla Reyes as our HR
5 coordinator.

6 Q Okay. So earlier, we discussed that you handle employee
7 issues, correct?

8 A Yes.

9 Q Okay. And as part of your regular duties, you handle
10 employee complaints, right?

11 A Yes.

12 Q Okay. And some of those complaints might involve
13 harassment, right?

14 A They could.

15 Q Okay. I'm going to have -- I'm going to ask you some
16 questions about how HR handles harassment complaints. When an
17 employee makes a harassment complaint, generally, what happens?

18 A If the associate makes a complaint directly to human
19 resources, we'll do a full investigation into that issue and
20 get the pertinent information, who, what, where, why, when, so
21 that we can do a full investigation into the issue.

22 Q Do you have a standard form that you used?

23 A No.

24 Q All right. Who is -- do you get a agent assigned to that
25 complaint?

1 A No.

2 Q Is it whoever that employee goes to directly that handles
3 it?

4 A It could be, yeah.

5 Q Okay. Do you regularly keep records of those complaints?

6 A Regularly. We have some records of some of the
7 complaints, yes.

8 Q Would an investigation include taking employee statements?

9 A Yes.

10 Q And would you keep those in your standard course of
11 practice business?

12 A Yes.

13 Q Okay. Now what if -- what happens when the employee makes
14 a complaint to the supervisor?

15 A The supervisor would typically notify human resources, so
16 that, again, we could do a full investigation.

17 Q And at that point, is the supervisor involved in the
18 investigation?

19 A Not unless they were directly related to it as far as a
20 witness.

21 Q Okay. Would they collect or gather the employee
22 statements?

23 A They may assist us --

24 Q Okay.

25 A -- but not generally.

1 Q Okay. And again, the same procedure. You would keep
2 records of the complaint and you would do a full investigation?

3 A Correct.

4 Q Okay. I believe you said you went on maternity leave on,
5 what was it, March 24th, 2015?

6 A That is correct.

7 Q Between December 2014 and March 24th, 2015, about how many
8 harassment complaints did HR receive?

9 A I wouldn't -- couldn't recall all of those or have a
10 number for you.

11 Q A handful, a dozen?

12 A Again --

13 Q More than a dozen?

14 A -- I could not speculate on how many.

15 Q But HR would have records of those?

16 A We would have specific names. We would have to have
17 specific names to research what those complaints were.

18 Q When you were an HR manager, which specific employees did
19 you oversee?

20 A The Arizona Foods location.

21 Q Is that the warehouse facility?

22 A Yes, it includes the warehouse facility.

23 Q Okay. So the warehouse facility and what else?

24 A Everybody that was at that facility. And then I had some
25 responsibility for our corporate, for our dairy, and then also

1 our farm.

2 Q Okay. Was any one of those particular business partners
3 or generalists, specifically, for the warehouse employees?

4 A When James Allen was hired, he was given the
5 responsibility for the warehouse.

6 Q Is James Allen still with the company?

7 A No, he's not.

8 Q Do you know when he was let go?

9 A I believe he left somewhere in June.

10 Q Of this year?

11 A Correct.

12 Q Do you know why he was let go?

13 A He was not let go. He resigned his position.

14 Q Okay. Do you know approximately how old he is?

15 A I do not.

16 Q Twenties, thirties?

17 A Speculating, he's probably in his twenties, late twenties?

18 Q Did you play a role in hiring him?

19 A No, I did not.

20 Q Do you know who hired him?

21 A He was my direct report, but he was a transfer from
22 another department within our organization.

23 Q Do you know which department?

24 A Business process improvement.

25 Q Do you know where he lives?

1 A Currently?

2 Q Yes.

3 A In California, I believe.

4 Q Do you know his reason for leaving the company?

5 A He left to return to school.

6 Q Now that you're a generalist, you still oversee the
7 warehouse employees?

8 A No, I do not.

9 Q Who do you oversee now?

10 A I'm at our corporate office.

11 Q When you were still HR manager, did you have an office at
12 the warehouse?

13 A At the Arizona Foods location, yes, I did.

14 Q Did you have any at their offices?

15 A No.

16 Q About how far away was your office from the warehouse
17 itself?

18 A I was in the office part, which is probably, I don't know,
19 100 yards. You have to go around the building and then -- and
20 to get -- gain access into the warehouse.

21 Q And there's like a suite of administrative offices?

22 A Yes.

23 Q All right. Do HR generalists have the authority to hire?

24 A Yes.

25 Q Do HR generalists have the authority to fire?

1 A With the assistance of a manager, yes.

2 Q Do HR business partners have the authority to hire?

3 A Yes.

4 Q Do they have the authority to fire?

5 A Again, with the assistance of a manger, yes.

6 Q Does the manager have to check with anyone before they
7 hire or fire anyone?

8 A They should be going through -- assisting with -- human
9 resources assists with that.

10 Q And HR manager.

11 A Yes.

12 Q So an HR manager can make the final decision without
13 consulting with anyone?

14 A We typically consult higher than us as an HR manager.

15 Q Okay. So the HR manager doesn't make the final decision?

16 A They can. But in some cases, they can be consulting
17 higher.

18 Q Okay. And who would that higher person be?

19 A In my case, it would going to our HR director at the time?

20 Q Monica?

21 A Yes.

22 JUDGE WEDEKIND: Who?

23 THE WITNESS: Monica Hergert.

24 JUDGE WEDEKIND: Okay.

25 Q BY MS. OVIEDO: But they don't have to consult, right?

1 A Correct.

2 Q Okay. As part of your job as HR manager, did you
3 coordinate employee meetings?

4 A Yes.

5 Q What kind of meetings did you help coordinate?

6 A All sorts of different meetings. We held benefit
7 meetings, coordinate employee events, coordinate meetings --
8 roundtable meetings, those types of --

9 Q Town hall meetings?

10 A Town hall meetings.

11 Q Roundtable meetings, union prevention meetings?

12 A We've had educational meetings.

13 Q Were you present at a town hall meeting on January 28th,
14 2015?

15 A No, I was not.

16 Q Were you at any other meetings that day?

17 A No, I was not. I apologize. Did you say January 28th?

18 Q Yes.

19 A I'm sorry. I thought you said -- I meant March 28th. So
20 January 28th, yes, I was.

21 Q Okay.

22 A Sorry.

23 Q And just so the record is clear, were you at a town hall
24 meeting on January 28th?

25 A It was not a town hall meeting on January 28th.

1 Q Okay. So --

2 A Because I was at several --

3 Q -- if there was a town hall meeting, you weren't at it?

4 A Correct.

5 Q Okay. Any other meetings that day?

6 A I had several meetings that day.

7 Q Okay. What kind of meetings did you have at that time?

8 A I recall two roundtable meetings that day.

9 Q At what time was the first meeting held?

10 A My roundtable meeting with the warehouse associates, the
11 first one was held, I believe, around 10:00 in the morning.

12 Q And the second?

13 A Was around 5:00 at night.

14 Q And with whom was that meeting held?

15 A With our warehouse associates.

16 Q Okay. Just different shifts?

17 A Correct.

18 Q Okay. At the first meeting, at the 10 a.m. meeting, how
19 many employees were present?

20 A I would say approximately 25.

21 Q And at the 5 p.m. meeting, how many employees were
22 present?

23 A I'd say approximately 25 to 30.

24 Q And how many warehouse employees are there total?

25 A Approximately 300, I believe.

1 Q For the 10 a.m. meeting, why, specifically, those 25
2 employees?

3 A It was a roundtable meeting, which is standard to our --
4 my job responsibilities. And it was an open invitation. But
5 we do typically do a random selection of an invitation if they
6 want to come. But then it is an open invitation for anybody
7 who wants to attend.

8 Q How was this invitation made to employees?

9 A We'll do a job posting -- or not a job posting. A posting
10 for them to be invited, so they know when and where it is. But
11 I also an administrative assistant to invite specific
12 associates.

13 Q And what medium does your assistant use to invite these
14 employees?

15 A I don't know. It could be phone or a person.

16 Q Could it be by email?

17 A Again, I don't know. Typically, those associates don't
18 have email. So I would not think it would be.

19 Q Do you keep a log of all these meetings?

20 A Yes.

21 Q Do you keep an attendance sheet of all these meetings?

22 A No.

23 Q Are there ever attendance sheets used at these meetings?

24 A No.

25 Q What about any meetings? You said there's several

1 meetings, roundtable, town hall, educational.

2 A At other meetings, yes, we keep attendance records.

3 Q Which specific meetings, what type rather?

4 A Our town hall meetings --

5 Q Okay.

6 A -- we'll keep attendance records. Our benefit educational
7 meetings we'll keep records.

8 Q Why weren't you at the town hall meeting on January 28th?

9 A I don't recall a town hall meeting on that day.

10 Q Okay. But do you know that there was one at all?

11 A Again, I -- the town hall meeting is a term that we use
12 for some other meetings. So when it's a town hall meeting, I
13 don't know.

14 Q How about s state of the company address?

15 A A state of the company, again, no. I don't recall a state
16 of the company address.

17 Q What about a union educational meeting?

18 A There was an educational meeting that day, yes.

19 Q Were you present for that?

20 A Yes, I was.

21 Q How many employees were present?

22 A It was in three auditoriums. So I would guess probably
23 around 200.

24 Q What members of management were present?

25 A I can't recall who all was there?

1 Q Who do you recall?

2 A I know Mark Engdahl was there. I believe Jerry Kropman
3 was there. And I don't recall the other managers or
4 supervisors that were there.

5 Q When you coordinate these types of meetings, do you
6 generally send emails about them?

7 A I did not coordinate that educational meeting.

8 Q Okay. Did you coordinate other educational meetings?

9 A No.

10 Q Did you receive any emails regarding those educational
11 meetings?

12 A No.

13 Q All right. How did you know there was an educational
14 meeting then?

15 A It was verbally, to my knowledge.

16 Q Did you receive any text messages about it?

17 A Not to my knowledge, not that I can recall.

18 Q When you were an HR manager, did you have a company
19 cellphone?

20 A Yes, I did.

21 Q Do you currently have a company cellphone?

22 A Yes, I do.

23 Q Is it the same cellphone?

24 A Yes.

25 Q Okay. One January 28th, during the educational meeting,

1 at approximately what time did that meeting happen?

2 A I believe it was 8:30 or 9:00 in the morning.

3 Q And unions were discussed at that meeting, right?

4 A It was an educational meeting.

5 MS. OVIEDO: And, Your Honor, I'm sorry. I don't believe
6 I ever requested to proceed with 611(c) with this witness.

7 JUDGE WEDEKIND: Any objection?

8 MS. INESTA: No objection, Your Honor.

9 JUDGE WEDEKIND: That's fine. I'm not sure we got an
10 answer on that last question.

11 THE WITNESS: Could you repeat the question?

12 Q BY MS. OVIEDO: Sure. At the 8:30 or 9 a.m. meeting,
13 unions were discussed, correct?

14 A It was an educational meeting. It wasn't a -- just a
15 discussion of unions.

16 Q Were unions discussed at that meeting?

17 A I was an educational meeting.

18 Q Were unions discussed at that meeting?

19 MS. INESTA: Objection to the extent it calls for
20 speculation.

21 JUDGE WEDEKIND: Overruled. I don't understand what the
22 speculation would be. I mean why she can't answer it yes or
23 no.

24 Do you not understand the question?

25 MS. INESTA: My understanding is she wasn't at the

1 meeting, Your Honor.

2 JUDGE WEDEKIND: Oh. I thought you were at the meeting.

3 THE WITNESS: I sat in that meeting.

4 MS. INESTA: Oh, you did. I'm sorry.

5 JUDGE WEDEKIND: I don't -- if you don't -- can you
6 explain why you can't answer the question yes or no?

7 THE WITNESS: It was an educational video with regard to
8 rights of associates, whether or not to sign a card or not,
9 what their rights were.

10 JUDGE WEDEKIND: What kind of card?

11 THE WITNESS: A union card.

12 JUDGE WEDEKIND: So unions were discussed then.

13 THE WITNESS: It was an educational video. So I don't
14 think that a union was necessarily discussed, but it --

15 JUDGE WEDEKIND: Oh, okay.

16 THE WITNESS: -- was mentioned in it.

17 JUDGE WEDEKIND: Then be more specific.

18 Q BY MS. OVIEDO: So unions generally were discussed. Not
19 any specific union.

20 A Yes.

21 Q Thank you. How long -- so you mentioned that there was a
22 video shown, correct?

23 A Correct.

24 Q Okay. How long did that video run for?

25 A I think it was approximately 20 minutes.

1 MS. OVIEDO: And, Your Honor, that was the document that
2 was refused, that was responsive to the subpoena.

3 JUDGE WEDEKIND: You say you did receive it?

4 MS. OVIEDO: Not received.

5 JUDGE WEDEKIND: You did not receive it. Okay.

6 Q BY MS. OVIEDO: Was there a slideshow at that meeting?

7 A I believe there was.

8 MS. OVIEDO: Your Honor, we also did not receive a copy of
9 the slideshow that was shown at that meeting.

10 Q BY MS. OVIEDO: Do you know who prepared that slideshow?

11 A I do not.

12 Q Did you receive a copy of that slideshow?

13 A No, I did not.

14 Q Mark Engdahl conducted that meeting, correct?

15 A Yes.

16 Q And you conducted the meeting at 10:30, correct?

17 A At approximately 10:00, yes.

18 Q Or at 10:00. And that was right after the anti-union
19 meeting, right?

20 A It was after an educational meeting.

21 Q There's a California facility, right?

22 A Yes.

23 Q Shamrock.

24 A Yes.

25 Q And you were aware of union activity at that facility,

1 correct?

2 A No.

3 Q No?

4 A It was mentioned in the meeting with Mark Engdahl, but I
5 was not aware of activity.

6 Q Okay. But so you heard that there were Teamsters at the
7 California --

8 A At some time previous, yes.

9 Q Okay. And you had an education meeting with drivers in
10 December 2014, right?

11 A Yes.

12 Q And as a result of hearing about the Teamsters in
13 California, correct?

14 A I was not at that meeting, so I don't know. But my
15 understanding is that was the reason for showing the video,
16 yes.

17 Q Was that the same video that was shown on the 28th?

18 A Again, I wasn't at the one in December. But it's my
19 understanding that yes, it was the same video.

20 Q Were there more than -- was there more than one video
21 shown to employees?

22 A Not at that time, no.

23 Q Regarding -- during these union education meetings, were
24 there multiple videos shown or was it the same video every
25 single time?

1 A There were additional education videos shown after that
2 first one.

3 Q And additional PowerPoint slide shows?

4 A No.

5 Q The same slideshow used every time?

6 A Again, I wasn't at the other one. So I wouldn't know.

7 Q Okay. Which ones were you at?

8 A The only one I attended was that educational meeting with
9 all those associates on the 28th, and then there was -- we had
10 some follow-up educational meetings in February.

11 Q And the follow-ups, who conducted those?

12 A Ivan.

13 Q Vaivao?

14 A Yes.

15 Q Was anyone from HR present during those meetings?

16 A I was present for some of them, yes.

17 Q Okay. So you did attend more than just the January 28th
18 meeting?

19 A That was a full group one. The other ones were small
20 ones.

21 Q So how many small ones did you attend?

22 A I can't recall how many there were, but that went on a
23 process of over about two weeks.

24 Q And they played videos during those smaller meetings as
25 well, correct?

1 A That is correct.

2 Q Okay. And were those the same videos each time?

3 A As we went through one with the same group, we showed one
4 video to the group of associates. And then the second time we
5 went through all the associates, they showed a second video.

6 MS. OVIEDO: And again, Your Honor, we didn't receive any
7 videos from Respondent.

8 Q BY MS. OVIEDO: So right after the -- I think you said
9 8:30 or 9. I'm not sure. But the 8:30 meeting --

10 A Okay.

11 Q -- that Mark Engdahl held --

12 A Yeah.

13 Q -- you conducted a separate meeting around 10, right?

14 A Correct.

15 Q Let's talk about that meeting. You educated your
16 associates at that meeting, right?

17 A No.

18 Q You didn't educate your associates at that meeting?

19 A No. That was a roundtable meeting.

20 Q A roundtable meeting. Okay. What's the distinction
21 between a roundtable and an educational meeting?

22 A Our roundtable meetings are standard meetings that we have
23 with our associates, not just the warehouse associates but with
24 all of our associates. And that's a forum where we get our
25 associates together. And again, it's an open invitation where

1 they are able to provide HR information on satisfaction or
2 dissatisfaction.

3 MS. OVIEDO: Your Honor, can I have a five-minute recess.

4 MS. INESTA: No objection, Your Honor.

5 JUDGE WEDEKIND: Okay, sure. Off the record.

6 (Off the record at 10:44 a.m.)

7 Q BY MS. OVIEDO: Okay. So I believe we were still talking
8 about January 28th.

9 A Uh-huh.

10 Q So there was that meeting that Mark Engdahl had just held
11 earlier that morning. And then you had a meeting immediately
12 after, right?

13 A Correct.

14 Q And so, the sort of meeting that you were conducting, the
15 employees asked you what Mark Engdahl's meeting was all about,
16 right?

17 A I recall one individual asking me why we were having that
18 meeting, yes.

19 Q And you told the employees that they were going and making
20 the rounds with everyone, right?

21 A Correct.

22 Q That they were just educating them, right?

23 A Correct.

24 Q And that was important that they be educated, right?

25 A Correct.

1 Q Okay. So that they could make educational decisions?

2 A Correct.

3 Q Right. And then after that, you began your meeting,
4 right?

5 A Correct.

6 Q And let's talk about what you said at that meeting. The
7 purpose of that meeting was to find out what complaints
8 employees had, right?

9 A The purpose of that meeting is to solicit satisfaction or
10 dissatisfaction, questions, concerns that associates had. It's
11 a standard responsibility that I have to go to all of the
12 associates or all the departments and have those meetings on a
13 regular basis.

14 Q Okay. And when was the last time you had had one of
15 those?

16 A With the warehouse associates?

17 Q Yeah.

18 A It would have been in October of 2013.

19 Q Okay. And at this meeting, what sorts of employee
20 complaints came up?

21 A There were all sorts of ones. I couldn't specifically
22 recall all the individual concerns or questions that associates
23 had. I recall a few questions that came up as far as W-2
24 earnings going down. So I was going to look into that, because
25 I had no knowledge that their earnings had gone down. There

1 were operational questions or concerns. Incentive concerns,
2 questions, those types of things came up. The change of
3 operations that we had recently that had -- there were some
4 concerns about how that was going to impact them.

5 Q Did you take any notes during this meeting?

6 A Yes. Well, Karla Reyes took our notes for me.

7 Q Okay. And do you regularly take notes at those types of
8 meetings?

9 A In the roundtable meetings, yes.

10 Q Okay. And does HR retain a copy of those notes?

11 A Yes.

12 Q Okay.

13 MS. OVIEDO: Your Honor, again, we didn't receive copies
14 of those.

15 Q BY MS. OVIEDO: Okay. So there were employee complaints
16 about major overhaul -- the major overhaul plan, right?

17 A There were concerns and questions about it.

18 Q Okay. And there were complaints about there being no
19 process involvement?

20 A Process involvement? I don't --

21 Q EPI lingo.

22 A I don't recall specifically.

23 Q Okay. That's fine. Employees were worried about how they
24 were going to be affected by the new plan, right?

25 A Correct.

1 Q Okay. And how it was changing their pay process, right?

2 A I don't recall the pay portion of it. I know that there
3 was a pay change with some of the fork lifters, because their
4 responsibilities were changing.

5 Q And there were employee complaints about newer equipment
6 being needed regarding pallet jacks, radios, scanners, and
7 other maintenance equipment, right?

8 A Again, I don't recall the specific complaints.

9 Q Complaints about the company no longer feeling like a
10 family company but, rather, a corporate structure, right?

11 A Again, I don't recall the specific complaints.

12 Q Okay. Complaints about employees not being able to listen
13 to music anymore?

14 A That was -- there was a change in operations on that that
15 could have come up. But again, I just don't recall the
16 specifics.

17 Q Okay. And the reason you wanted to hear the complaints is
18 that you could see if there's anything you could do about it,
19 right? To see if you could help them?

20 A Not myself specifically. Again, these were standard
21 meetings that we had, that we would gather the list of concerns
22 or questions or issues that they had, and we would meet -- I
23 would meet with them and management. They were completely
24 anonymous. So I don't keep notes as far as who said what in
25 any of the meetings. And I would work with management to

1 develop that list, so that we could then respond to those
2 questions or concerns. Sometimes they could fix things.
3 Sometimes we couldn't. But we would talk to the associates and
4 communicate to them as far as why we did what we did or why we
5 couldn't fix something.

6 Q Did you make like a top 10 list?

7 A There was a -- that would be our list of issues or
8 concerns.

9 Q Okay. And the whole purpose though was that you could
10 talk to employees, get out their concerns, and then see if
11 there's anything you could do about it to help fix, right?

12 A Correct.

13 Q Okay. And correct me if I'm wrong, but I believe you said
14 that you were at a meeting on -- in around mid-February, right,
15 with Ivan Vaivao?

16 A That is correct.

17 Q Do you recall the date?

18 A I think they started in early February.

19 Q And you said that there were several meetings in February,
20 right?

21 A Correct.

22 Q You didn't necessarily conduct them though, right?

23 A Correct.

24 Q Did Ivan conduct all of them?

25 A Yes.

1 Q Okay. About how many would you say there were in
2 February?

3 A The ones that I attended went on for about a week -- like
4 I said, a week-and-a-half. And there was probably two or three
5 a day. So probably maybe 14, 10 to 14.

6 Q You guys were -- I'm sorry. Go ahead.

7 A Sorry, 10 to 14.

8 Q And about how many employees were present for those
9 meetings?

10 A Probably approximately 10, 10 to 15.

11 Q And those were educational meetings?

12 A Yes.

13 Q And those meetings, there were videos played at them, at
14 all of them?

15 A Yes.

16 Q Okay. And those meetings weren't just to talk about
17 unions but just to talk about what issues were still going on,
18 on the employee floor, right?

19 A Well, the main purpose of those meetings was to give some
20 feedback to the associates with regards to the roundtable
21 meetings that I had had previously, on January 28th. Like I
22 said, there were some questions about the W-2 earnings, the way
23 -- I had done some research as far as the W-2 earnings. There
24 had been questions about the health benefits still. So I could
25 address some of those. They had questions about some pension

1 and then some wages as far as wage surveys. So the main intent
2 of those meetings was, first, to give some feedback to the
3 associates about those specific items from the roundtable
4 meeting. But then were also educational videos played.

5 Questions would come up or concerns would come up. We're
6 always willing to listen to our associates for their questions
7 or concerns or things that they bring up.

8 Q What about layoffs? Was that one of the issues that's
9 brought up during those meetings?

10 A I do recall a question about layoffs coming up.

11 Q And employees were still concerned about that?

12 A Yes.

13 Q And you took that concern to upper management, right?

14 A Yes.

15 (Counsel confer)

16 MS. OVIEDO: Can the record reflect that someone just
17 stepped in? And could he name himself for the record?

18 MR. DAWSON: This is Michael Parente, P-A-R-E-N-T-E. And
19 he would have the same address and contact information as
20 myself.

21 Q BY MS. OVIEDO: Ms. Wright, I'm going to play an audio
22 recording, and I'm going to ask you to tell me if you can
23 identify the voice that's heard.

24 A Okay.

25 (Audio played at 11:04 a.m., ending at 11:04 a.m.)

1 Q BY MS. OVIEDO: Not that one. I'm also going to play a
2 little bit of the beginning, a little bit of the middle, and a
3 little bit of the end. Then I'm going to ask you if it
4 accurately reflects what took place during --

5 A Okay.

6 Q -- the meeting on January 28th, 2015, at about 10 a.m.
7 I'm not sure if -- and about how long did that meeting end --
8 or last?

9 A I'd say approximately an hour.

10 Q An hour, okay.

11 MR. DAWSON: Your Honor, just for clarification, is the
12 recording that we're listening to, General Counsel 8(a)?

13 MS. OVIEDO: No.

14 MS. DEMIROK: No, it's not. And we will provide you a
15 copy with the recording right now presented as --

16 MR. DAWSON: Your Honor, we had asked just -- I think -- I
17 believe we had stipulated yesterday that we would be able to
18 receive all transcripts.

19 JUDGE WEDEKIND: Yeah.

20 MS. DEMIROK: All the transcripts that we were introducing
21 yesterday.

22 JUDGE WEDEKIND: Oh. So there was a misunderstanding,
23 apparently.

24 MR. DAWSON: Yeah. Our understanding was it was
25 transcripts of all recordings.

1 JUDGE WEDEKIND: Yeah, I understood that too. But
2 obviously, we misunderstood.

3 MS. DEMIROK: Well, I think we had a conversation
4 yesterday. And I said no, there's one more. And I'm not going
5 to give that to you until we introduce it.

6 MR. DAWSON: That was after we had gone off the record and
7 --

8 JUDGE WEDEKIND: Okay. So that was off the record?

9 MR. DAWSON: That was off the record.

10 JUDGE WEDEKIND: I was not privy to that conversation.

11 MR. DAWSON: And we would object to the extent that we
12 weren't provided -- obviously, we don't have the transcript
13 yet. But our understanding of the stipulation was that all
14 documents would be provided.

15 JUDGE WEDEKIND: But you agree you had a conversation
16 about this one?

17 MR. DAWSON: We had it as we were walking out. But I
18 mentioned to Ms. Demirok that, you know, we weren't agreeing
19 that that would come in.

20 JUDGE WEDEKIND: Okay.

21 MR. DAWSON: We had a different understanding.

22 MS. DEMIROK: Your Honor, we wouldn't have been able to
23 provisionally admit it anyway, because we didn't have a witness
24 on the stand.

25 JUDGE WEDEKIND: I think you did say on the record that

1 you were going to introduce all but one I think is what you --

2 MS. DEMIROK: Right.

3 JUDGE WEDEKIND: -- said. I'm not convinced that there
4 was anything untoward that went on here. It was apparently a
5 misunderstanding. Would you like to provide counsel with the
6 transcript now?

7 MS. DEMIROK: Absolutely.

8 JUDGE WEDEKIND: Okay. Why don't you do that?

9 MS. OVIEDO: Actually, can we ask this witness first,
10 because if she can't authenticate it, then we're not going to
11 be able to move to admit it at this time.

12 JUDGE WEDEKIND: Okay. But you're going to move to admit
13 it later?

14 MS. OVIEDO: Potentially, yes.

15 JUDGE WEDEKIND: Potentially, or are you going to admit
16 it?

17 MS. OVIEDO: Well, I'd like to ask the witness questions
18 first. And if she can identify the voices, then we'll give a
19 copy to Respondent's counsel.

20 JUDGE WEDEKIND: All right. Let's try your method.

21 MS. OVIEDO: Assuming she can, then we'll hand it over
22 right now.

23 JUDGE WEDEKIND: Sure, okay.

24 (Audio played at 11:07 a.m.)

25 Q BY MS. OVIEDO: Ms. Wright, were you able to identify that

1 voice?

2 A I believe that was myself.

3 Q That was your voice?

4 A (No verbal response).

5 Q Can you just for --

6 A Yes.

7 Q -- the record --

8 A Yes.

9 Q Okay, thank you.

10 A I believe it was.

11 MS. OVIEDO: We'll hand Respondent a copy of the recording
12 and a copy of the transcript, which have been marked as GC-
13 15(a), the transcript, and GC-15(b), the recording.

14 JUDGE WEDEKIND: And the date of the meeting, again, is?

15 MS. OVIEDO: January 28th.

16 MS. INESTA: If I may, Your Honor, the Respondent -- it
17 doesn't need to be on the record. But can we have -- just for
18 distinction, do you have a time on the January 28th, that was
19 General Counsel's Exhibit 8?

20 MS. OVIEDO: Yes.

21 MS. INESTA: Can we get that?

22 MS. OVIEDO: That was at 9 a.m.

23 MS. INESTA: Okay. Just so we can --

24 MS. OVIEDO: Approximately.

25 MS. INESTA: Approximately.

1 Q BY MS. OVIEDO: Ms. Wright, I'm handing you what's been
2 marked for identification as GC-15(a). We're going to rewind
3 the audio just a little but so that I can ask you whether or
4 not it's an accurate reflection of the beginning for the
5 meeting. So we're just going to play through a small segment
6 of the start of the audio.

7 (Audio played at 11:10 a.m.)

8 Q BY MS. OVIEDO: Ms. Wright, were you able to identify that
9 voice?

10 A I don't recall who that is.

11 Q Okay.

12 A It may be Mr. Phipps, but --

13 Q Okay. So it sounds like Mr. Phipps?

14 A Yes.

15 Q Okay.

16 MS INESTA: And Your Honor, I'm sorry, just for the
17 record. I mean I kind of want to understand a little bit about
18 what the purpose of the -- I mean this isn't being used as
19 impeachment evidence. It almost seems like they're just trying
20 to introduce the testimony from the video. So --

21 JUDGE WEDEKIND: I think that's my understanding. You
22 plan to introduce this as substantive evidence?

23 MS. OVIEDO: Yes, Your Honor. We're asking the witness to
24 authenticate it.

25 JUDGE WEDEKIND: Right, that's my understanding. So what

1 we just heard was on page 4.

2 MS. OVIEDO: Yes, Your Honor.

3 MS INESTA: On page 4.

4 MS. OVIEDO: And Your Honor, for the record, we're at 4
5 minutes and 40 seconds of the audio recording.

6 (Audio played)

7 Q BY MS. OVIEDO: Ms. Wright, does that accurately reflect
8 the beginning of that meeting on January 28th at about 10 a.m.?

9 A Yes.

10 Q And did you recognize that voice that was just played, the
11 one at the very end?

12 A No.

13 Q Okay. Who is Latisha?

14 A Latisha is an operations payroll administrative associate.

15 Q What's her last name?

16 A I can't recall her last name right now.

17 Q Okay.

18 MS. OVIEDO: And Your Honor, before you go on, I do just
19 want to object that it appears that on page 7, line 22, where
20 it says I would like two voters, we don't think that accurately
21 reflects what was said.

22 JUDGE WEDEKIND: Yeah, you know, I noticed a few
23 transcription errors and probably even transfer over to -- that
24 happens. Apparently we're going to have to listen to the audio
25 to make sure certain parts are correct.

1 MS INESTA: And Your Honor, if we could just place a
2 standing objection on the record. It's hard even at this
3 context to catch every single mistake. We have been as we read
4 them seeing things that do not seem to make sense and again, I
5 think it's transcription errors.

6 JUDGE WEDEKIND: Sure. And unfortunately I saw many of
7 those mistakes in the transcript for this hearing already.
8 That just happens, you know.

9 MS INESTA: And there's also words missing.

10 JUDGE WEDEKIND: Yeah.

11 MR. DAWSON: Your Honor, this particular one though is I
12 think important because voter would suggest something --

13 JUDGE WEDEKIND: Sure.

14 MR. DAWSON: I think we think it was loader.

15 JUDGE WEDEKIND: Sure.

16 MR. DAWSON: And that wouldn't be important.

17 JUDGE WEDEKIND: Yeah, what I would suggest you do, and
18 unfortunately that's just the nature of the beast, is if you
19 notice anything like that, ask the witness about it or listen
20 to the audio. And try to get --

21 MS. OVIEDO: Your Honor, we've noted a few, too.

22 JUDGE WEDEKIND: Yeah.

23 MS. OVIEDO: And so were just going to raise it in the
24 brief as saying that the transcript incorrectly refers to it as
25 X and then just say what the audio actually says.

1 MR. DAWSON: Yeah, I mean we could maybe even be able to
2 have a conversation at least on some of them --

3 MS. OVIEDO: Right.

4 MR. DAWSON: -- that we identify and stipulate --

5 MS. OVIEDO: Right.

6 UNIDENTIFIED SPEAKER: Stipulate.

7 JUDGE WEDEKIND: That would be great.

8 MR. DAWSON: -- as to what it is, you know.

9 JUDGE WEDEKIND: Reach a stipulation.

10 MR. DAWSON: Yeah.

11 JUDGE WEDEKIND: Sure. Thanks for pointing it out though.

12 Okay. One thing I would just ask that are these all men in
13 this meeting or are there a mixture of women and men?

14 THE WITNESS: I think it was predominantly men.

15 JUDGE WEDEKIND: Predominantly, but not all?

16 THE WITNESS: Yeah, I couldn't recall if there was any
17 other women. I have an associate, Karla, that was in there
18 taking notes.

19 JUDGE WEDEKIND: Okay.

20 THE WITNESS: But we do have a few female associates that
21 work in the warehouse. I just don't recall if they were in
22 that meeting or not.

23 JUDGE WEDEKIND: Okay.

24 THE WITNESS: But it is predominantly male.

25 JUDGE WEDEKIND: I was just wondering if unidentified

1 female is always you?

2 THE WITNESS: Probably 90 percent of the time it probably
3 will be but --

4 JUDGE WEDEKIND: Ninety percent, okay. Thanks.

5 MS. OVIEDO: We're going to fast forward through towards
6 the middle segment --

7 JUDGE WEDEKIND: Okay.

8 MS. OVIEDO: -- of the audio. And just for the record, we
9 are now at 19:47 on the audio recording.

10 (Audio played)

11 MS. OVIEDO: And just so that the record reflects, we're
12 on page 18 of the transcript. At the bottom of the page, line
13 20.

14 (Audio played)

15 Q BY MS. OVIEDO: Ms. Wright, does that accurately reflect
16 20:30 minutes into the meeting?

17 A I would assume so, yes.

18 Q Well, I don't want you to assume. To the best of your
19 recollection?

20 A Yes.

21 Q Okay.

22 A To the best of my recollection.

23 Q Okay.

24 (Audio played)

25 MS. OVIEDO: And just for the record, that is page 66 and

1 we're at about 1 hour 16 minutes and 58 or I'm sorry, 1 hour, 1
2 minute and 56 seconds.

3 MR. DAWSON: Did you say page 66?

4 MS. OVIEDO: Page 66, yes.

5 MR. DAWSON: 66, great, thank you.

6 Q BY MS. OVIEDO: And Ms. Wright, does that accurately
7 reflect somewhat towards the end of the meeting? We can play a
8 little bit more.

9 A Again, I don't recall, but --

10 Q Okay. We can play a little bit more --

11 A Yes.

12 Q -- if you need.

13 (Audio played)

14 Q BY MS. OVIEDO: Ms. Wright, does this accurately reflect
15 towards the end of the meeting?

16 A Yes.

17 Q Okay.

18 MR. DAWSON: Can we have the time just on that part?

19 MS. OVIEDO: And for the record, let the record show that
20 that was hour 1 minute 3 second 57.

21 MR. DAWSON: 1 hour 3 second 57.

22 MS. OVIEDO: Right, about page 69, 68 or 69.

23 MR. DAWSON: Your Honor, and obviously we can do this on
24 our own, but to avoid having to find the place in the
25 recording, would we be able to ask the witness to identify who

1 was speaking just then?

2 JUDGE WEDEKIND: Sure, that's fine. If you think it's
3 important, sure.

4 MS. OVIEDO: Sure, not a problem.

5 Q BY MS. OVIEDO: Ms. Wright, did you recognize that voice
6 that we just heard?

7 A The very last voice sounded like Mr. Phipps. Prior to
8 that, I could not tell you who it was.

9 MR. DAWSON: Okay.

10 MS. OVIEDO: And we're just going to fast forward towards
11 the end so that we could see what the very end reflects.

12 (Audio played)

13 Q BY MS. OVIEDO: And Ms. Wright, does that accurately
14 reflect the end of that meeting?

15 A Yes.

16 Q Okay. Thank you.

17 MS. OVIEDO: And for the record, that's 1 hour 12 minutes
18 and 7 seconds and about page 77 of the transcript.

19 Q BY MS. OVIEDO: Ms. Wright, who's Lana?

20 A Lana is our payroll, operations payroll supervisor.

21 Q Do you know her last name?

22 A Lana, I think Sutter.

23 Q S-U-T-T-E-R?

24 A I believe so.

25 Q And who is Kerry?

1 A Kerry could be our benefits manager, Kerry Fulton.

2 MS. OVIEDO: Your Honor, at this time, we'd like to move
3 to provisionally admit GC-15(a) and (b) into the record.

4 MS. INESTA: Your Honor, I surely object.

5 JUDGE WEDEKIND: Sure. It's provisionally admitted like
6 the other ones. I'm really getting tired of saying that.

7 **(General Counsel Exhibit Number 15(a) and 15(b) Received into**
8 **Evidence)**

9 Q BY MS. OVIEDO: Ms. Wright, do you know who Thomas Wallace
10 is?

11 A Yes.

12 Q Who is he?

13 A He was one of our warehouse associates.

14 Q Do you remember when he stopped being one of your
15 warehouse associates?

16 A I don't recall.

17 Q Do you remember why he stopped being one of your warehouse
18 associates?

19 A No.

20 Q You don't know if he got fired?

21 A I was on leave. So I don't know.

22 Q Okay. Who stood in for you when you were on maternity
23 leave?

24 A I had several people covering for me. So I know that
25 Monica Hergert, our director of HR, was helping cover. Heather

1 Vines-Bright was helping cover. And James Allen.

2 Q When did you come back from maternity leave?

3 A June 15th.

4 Q And were you briefed on what happened during your leave?

5 A No.

6 Q However, HR would have retained any records of anything
7 going on while you were gone, correct?

8 A They would have. I would assume --

9 Q In the regular course --

10 A -- I would guess they would have, but I don't know for
11 sure.

12 Q During the regular course of business?

13 A Yes.

14 Q Okay. When you discharge employees, you keep records of
15 that, right?

16 A What -- only termination reports.

17 Q Okay. So there's termination reports?

18 A Correct.

19 Q Is part of that termination report a separation agreement?

20 A If there was one offered, yes.

21 Q Okay. Would it include anything else?

22 A Not typically. Not that I know of.

23 Q Right. On the termination forms, you document the reason
24 for the termination?

25 A Yes.

1 Q All right.

2 MS. OVIEDO: Your Honor, this is also a document that we
3 had subpoenaed that we didn't receive for Thomas Wallace.

4 MR. DAWSON: Your Honor, I don't believe that's correct.
5 I thought counsel for the General Counsel said they did have
6 Wallace's personnel file.

7 MS. OVIEDO: But not his discharge papers or separation
8 agreement.

9 MR. DAWSON: Well, you do have the separation agreement
10 because you introduced it.

11 MS. DEMIROK: We got that from him.

12 MR. DAWSON: Okay. But we --

13 MS. OVIEDO: Our witness, not from Respondent.

14 MR. DAWSON: And there is in Mr. Wallace's personnel file,
15 there is a termination report. I've seen it. And it's there,
16 we can look for the Bates label, but it's there. It's just a
17 one pager.

18 MS. DEMIROK: We would just ask for the Bates label
19 because I personally I have gone through the eight different
20 files with several papers in his personnel file and I didn't --

21 JUDGE WEDEKIND: I may be wrong, but I could have sworn
22 that somebody, counsel or somebody said there's no
23 documentation of terminations on the first day of hearing.

24 MR. DAWSON: Not of -- there's an internal document and we
25 can excuse the witness if need be. There's an internal

1 document, but the -- or the individual is not given something
2 that says here's why you were terminated. There's just an
3 internal HR form that says --

4 JUDGE WEDEKIND: Well, I think we were talking about
5 internal HR forms at the time.

6 MR. DAWSON: And there is -- that is in the personnel
7 file.

8 JUDGE WEDEKIND: Okay. If you provided it by the Bates
9 number and --

10 MS. DEMIROK: We did bring this up when we were talking
11 about the documents that were not produced via the subpoena.

12 JUDGE WEDEKIND: Right.

13 MS. DEMIROK: And I actually now I do remember, we said
14 there weren't -- there wasn't a termination report in his
15 personnel file and that's when we were told that they don't
16 keep such records for any employees.

17 JUDGE WEDEKIND: Right, I distinctly remember that. I
18 thought -- it surprised me.

19 MR. DAWSON: We don't -- and if I misspoke, I apologize.
20 But we don't give a termination notice to an employee. That's
21 absolutely correct.

22 JUDGE WEDEKIND: Well, that's fine, but I don't think that
23 that's what they're asking for. But in any event --

24 MR. DAWSON: It should be in there.

25 JUDGE WEDEKIND: -- if you did provide it --

1 MR. DAWSON: Correct.

2 JUDGE WEDEKIND: -- that kind of answers the whole issue.

3 So let's get the Bates number.

4 MR. DAWSON: If I can -- can you go --

5 JUDGE WEDEKIND: But we don't need to do it right now. In
6 any event, you've made your point and we'll find out if it's in
7 there.

8 Q BY MS. OVIEDO: Did you learn after you came back from
9 leave that Thomas Wallace had been discharged?

10 A Yes, I had heard that he had been discharged.

11 Q From whom did you hear that?

12 A I don't recall.

13 Q Do you remember about when you heard that?

14 A No.

15 Q What is it that you heard?

16 A Just that he was no longer with the company.

17 Q Did you hear any reason why?

18 A No.

19 Q Did you find it curious that it was brought up to you?

20 A I went through personnel -- not personnel reports, but I
21 get emails and when I was going through my emails, I get
22 termination reports. So I knew he had been terminated. But I
23 didn't go and seek after information and --

24 Q Okay.

25 MS. OVIEDO: Your Honor, we'd also --

1 THE WITNESS: But I don't recall who talked to me about
2 it.

3 MS. OVIEDO: Your Honor, we'd also like to note that we
4 didn't receive any emails regarding his termination report.

5 Q BY MS. OVIEDO: Ms. Wright, the termination report that
6 you received via email stated the reason why Mr. Wallace was
7 discharged, right?

8 A Yes, it would have.

9 Q And what was that reason?

10 A If I can recall correctly, I believe it might have said
11 insubordination.

12 Q So then you did know why he was fired, right?

13 A I don't know the circumstances surrounding his
14 termination, no.

15 Q But you know the reason given?

16 A The reason that was on the report would be --

17 Q Okay.

18 A -- was what was given. But I don't know the circumstances
19 surrounding his termination.

20 Q What else did the termination report say?

21 A It would just give dates of employment and position. Last
22 day worked, typically eligible for rehire or not and
23 information on -- if it had email, if somebody else needs email
24 access.

25 Q And what did his say specifically with regard to rehire?

1 A I honestly don't recall.

2 Q Okay. And what did specifically his last day say?

3 A I honestly don't recall.

4 Q Okay. Who sent you that email?

5 A It's -- I'm copied on it because it's a termination report
6 that would go to our payroll department in order to be
7 processed for final pay. And I'm copied on terminations. I
8 was copied on terminations up until the middle of April.

9 Q And who else was cc'd on that?

10 A I don't recall.

11 Q Okay. Who sent it to payroll?

12 A It would have been Karla Reyes, our coordinator.

13 Q In terms of hierarchy, it was my understanding that she
14 was a secretary. Is she more --

15 A She's a coordinator. She's HR coordinator. So similar to
16 an administrative assistant.

17 Q Okay. Who notified her; do you know?

18 A No.

19 Q Who is it that she assists?

20 A She would have assisted everybody in our HR department.
21 So James Allen, Tiffany Hawks, Heather while she was in there,
22 myself.

23 Q Does she assist Bob Beake?

24 A No.

25 Q Who assists Bob Beake?

1 A Bob Beake's assistant is I believe Ashley.

2 Q Do you know if Ashley was cc'd on that email?

3 A I do not know.

4 Q Do you know Ashley's last name?

5 A Amery, A-M-E-R-Y, Amery, I believe.

6 Q Who made the decision to fire Thomas Wallace?

7 A I do not know.

8 Q You never learned who made the decision?

9 A No.

10 Q Did you learn anything else regarding the circumstances of
11 his discharge?

12 A No.

13 Q Did you personally know Thomas Wallace?

14 A I have interacted with him before, yes.

15 Q Who would know the reason for his discharge?

16 MR. DAWSON: Objection. Well, to the extent she knows,
17 I'm sorry.

18 JUDGE WEDEKIND: Yeah, if you have personal knowledge.

19 THE WITNESS: I don't.

20 Q BY MS. OVIEDO: Well, while you were on leave, you said
21 that James Allen was in charge of the warehouse employees?

22 A He would have been in charge of those, yes.

23 Q So would he be aware?

24 A He may have. I don't know if he was involved or not.

25 Q Okay. Did you ever speak to James Allen about Thomas

1 Wallace?

2 A No.

3 Q Did you speak to anyone else in HR about Thomas Wallace?

4 A Not that I can recall, except for like I said, somebody
5 told me that he was terminated. And I knew on the termination
6 report.

7 Q Okay. Is the termination report signed?

8 A It shows who completed it.

9 Q And who completed it?

10 A Again, I don't recall.

11 MS. OVIEDO: Your Honor, could we just have a brief moment
12 to consult?

13 JUDGE WEDEKIND: Sure. Off the record.

14 (Off the record at 11:40 a.m.)

15 JUDGE WEDEKIND: Do we know what the Bates number is yet?

16 MS. DEMIROK: We don't know what the Bates number is yet.

17 And I've just asked Respondent's counsel if they could get that
18 to me as soon as possible. I've also mentioned that although I
19 had looked through all of the documents that were in Mr.

20 Wallace's personnel file that we received via the production of
21 the -- for the subpoena, I do not recall seeing one and I was
22 specifically looking for that. However, I will make an attempt
23 to go back through those documents and take a look.

24 But I mean this is -- for the record, this is an essential
25 document I think and something that we specifically raised when

1 we brought up the documents that were not being produced from
2 the subpoena. And clearly from the testimony that we've heard
3 today, that document does exist and in fact I have just been
4 shown it from Respondent's counsel during the break.

5 MS. OVIEDO: It does not have a Bates number on it though.

6 MR. DAWSON: If I may, Your Honor, I absolutely thought
7 that we had produced that. That may have been the reason for
8 the -- and I still believe that we produced it. The way that
9 Mr. Wallace's personnel file is requested was to exclude
10 anything with workers' comp and I think benefits or something
11 else. If -- and social security. So if his termination -- we
12 receive, I absolutely thought that we had produced that. That
13 may have been the reason for the -- and I still believe that we
14 produced it. The way that Mr. Wallace's personnel file is
15 requested was to exclude anything with workers' comp and I
16 think benefits or something else. If -- and social security.
17 So if his termination -- we received the documents in I think
18 about 16 pdf files from Mr. Wallace. If that internal report
19 had been in a workers' comp pdf file, it wouldn't have been
20 uploaded. I don't think it was.

21 Nonetheless, I've just shown it to, not a Bates labeled
22 copy as Ms. Oviedo pointed out because I don't have a Bates
23 labeled copy, but I've shown the document to General Counsel
24 and it's exactly what Ms. Wright testified to. It's an
25 internal form that says insubordination and it doesn't have any

1 further substantive information on it.

2 JUDGE WEDEKIND: No signature?

3 MR. DAWSON: Does not, I don't think it did.

4 JUDGE WEDEKIND: You don't have to state it on the record.

5 I just --

6 MR. DAWSON: Yeah.

7 JUDGE WEDEKIND: Just pointing out that was some more
8 testimony, but well you know I've already ruled on the issue.
9 You make your decisions, what you want to do. Whether you want
10 to provide it or not.

11 MR. DAWSON: Well, Your Honor --

12 JUDGE WEDEKIND: And I think that we've had a lot of
13 testimony today, I'm not sure if you were here, about the
14 documents that at least counsel, General Counsel asserts are
15 responsive that were not provided.

16 MR. DAWSON: Well, Your Honor, and I mentioned this to Ms.
17 Demirok in our sidebar conversation. If -- my understanding
18 was we had uploaded Wallace's entire personnel file.

19 JUDGE WEDEKIND: Uh-huh.

20 MR. DAWSON: If there was a pdf file that did not get
21 uploaded, we'll absolutely produce that. And Bates labeled.

22 JUDGE WEDEKIND: That's up to you at this point.

23 MR. DAWSON: Yeah, thank you, Your Honor.

24 JUDGE WEDEKIND: But I think it's helpful for the record
25 to be clear about what was provided and what was not provided.

1 MR. DAWSON: Agreed and I said I believe on the record
2 that we had produced Wallace's file and if for some reason that
3 didn't happen, regardless of the sanctions, we're going to --
4 we are absolutely going to produce that.

5 JUDGE WEDEKIND: Okay.

6 MS. DEMIROK: Thank you.

7 JUDGE WEDEKIND: Sure.

8 MS. OVIEDO: Your Honor, we pass the witness.

9 JUDGE WEDEKIND: Okay. And just for the record, I'm not
10 going to accept anything that counsel says as evidence, okay,
11 about documents. Unless it's an admission.

12 MS. INESTA: Your Honor, if we could have five minutes to
13 discuss with co-counsel before we proceed.

14 JUDGE WEDEKIND: Sure. Off the record.

15 (Off the record at 11:59 a.m.)

16 JUDGE WEDEKIND: Okay, back on the record.

17 MS. INESTA: Your Honor, we reserve the right to call the
18 witness in our case in chief, but we have no questions at this
19 time.

20 JUDGE WEDEKIND: That's fine. Thank you very much. You
21 can step down. We do have a sequestration order in effect.
22 Please don't discuss your testimony with any other witness or
23 potential witness until this proceeding is over.

24 THE WITNESS: Okay.

25 JUDGE WEDEKIND: Could be another week or more.

1 THE WITNESS: Okay.

2 JUDGE WEDEKIND: Okay, thanks.

3 THE WITNESS: Can I leave this here?

4 JUDGE WEDEKIND: You can just leave everything there,
5 that's fine. Lunch?

6 UNIDENTIFIED SPEAKER: Yeah.

7 MR. DAWSON: Could we have, you know, just a couple of --

8 JUDGE WEDEKIND: Sure.

9 MR. DAWSON: -- oh, you're okay, ma'am.

10 THE WITNESS: Can I step out?

11 MR. DAWSON: Yeah. Absolutely.

12 UNIDENTIFIED SPEAKER: Thank you, Natalie.

13 MR. DAWSON: Co-counsel, co-trial counsel and then other
14 members of our legal team, not me, will be traveling home
15 today. And so we didn't know if we could get an agreement
16 maybe to go until 3 if that's okay.

17 JUDGE WEDEKIND: Well, let's talk about the schedule.
18 What's the plan?

19 MS. DEMIROK: Our next witness is going to be Bob Beake.

20 MR. DAWSON: Beake, okay. Okay, I can ask Bob.

21 JUDGE WEDEKIND: And do you have any -- what's your plan?
22 You plan to have anybody else?

23 MS. DEMIROK: We, I mean we could stop with Bob Beake.

24 That way we would -- I would imagine it would go probably after
25 lunch, maybe close to 3.

1 MR. DAWSON: Okay.

2 MS. DEMIROK: So we wouldn't have a problem with that.

3 MR. DAWSON: If 3 is okay, is that okay with Your Honor?

4 JUDGE WEDEKIND: That's fine with me although I hate to
5 lose time because this has gone very slow. At this point, when
6 do you think your case is going to be done, General Counsel?

7 MS. OVIEDO: We did want to out testimony regarding the
8 Union's labor organization status since they have declined to
9 stipulate to that. So --

10 JUDGE WEDEKIND: Did you want to do that before Mr. Beake?

11 MS. DEMIROK: No, we'd like to do that afterwards.

12 MS. OVIEDO: No.

13 MS. DEMIROK: So that is a good idea. We should put on
14 evidence of that today so that we can at least get to some --

15 JUDGE WEDEKIND: That sounds short, right?

16 MS. DEMIROK: Yeah.

17 JUDGE WEDEKIND: Yeah, okay. So question stands, what do
18 think about --

19 MS. OVIEDO: Let's do an hour for lunch and then go with
20 Bob Beake. If it goes all the way until 3, then you know, then
21 so be it. We would have liked to have put on additional
22 evidence, but --

23 MS. DEMIROK: Are they catching flights and this be the
24 like the last --

25 MR. DAWSON: Yeah, yeah.

1 JUDGE WEDEKIND: Well let me just say, you know, you
2 should have consulted me before you scheduled an early flight,
3 I'll say that. This has gone so slow. I'm not inclined to
4 stop at 3.

5 MS. DEMIROK: Okay.

6 JUDGE WEDEKIND: Okay. So I'm not inclined to do it. If
7 that's a natural break, that's fine with me. And if there's no
8 objection, I'm pretty much willing to do whatever you all agree
9 to.

10 MS. DEMIROK: Okay. I'll say this, we do have witnesses
11 prepared to testify. The witness that would be testifying
12 after the Union representative, the testimony is going to be
13 fairly long. So it may -- at least in that part, it may be a
14 better idea for that witness to testify -- to not start
15 testifying today.

16 JUDGE WEDEKIND: Sure. Just as in combination.

17 MS. DEMIROK: But I would imagine it could go past 3 with
18 having the Union representative on and I'm not inclined to cut
19 that off in the middle.

20 JUDGE WEDEKIND: Well, if you want to take a shorter
21 lunch, it's fine with me.

22 MR. DAWSON: Well, Your Honor, we have an agreement that
23 we'll have at least an hour's notice. I'm actually emailing a
24 witness right now.

25 JUDGE WEDEKIND: Okay.

1 MR. DAWSON: To head down.

2 JUDGE WEDEKIND: Okay.

3 MR. DAWSON: So he probably won't be here until 1.

4 JUDGE WEDEKIND: Okay. Well, that's fine. Let's come
5 back at 1, okay, that's 50 minutes for lunch.

6 MS. DEMIROK: Perfect.

7 JUDGE WEDEKIND: And let's just see how it goes. But
8 again, when do you think you're going to be done with your case
9 at this point?

10 MS. OVIEDO: Well, we have Mark Engdahl who doesn't come
11 in until Tuesday.

12 JUDGE WEDEKIND: Right.

13 MS. OVIEDO: So we'll probably end it Tuesday.

14 JUDGE WEDEKIND: Okay.

15 MS. OVIEDO: We'll be done Tuesday.

16 JUDGE WEDEKIND: Okay.

17 MR. DAWSON: Your Honor, one other preliminary item was
18 the -- I've been notified by Mr. Crowley that the Union intends
19 to petition to revoke the subpoena we -- that we requested, but
20 they're not going to do so until the fifth day. That being the
21 case, to the extent that the witnesses who provided that, which
22 we believe to be Mr. Phipps and Mr. Lerma, at least based on
23 what we've been told so far, we don't know if there are
24 additional tapes in Union's possession.

25 JUDGE WEDEKIND: Uh-huh.

1 MR. DAWSON: I'm not exactly quite sure what to ask for.
2 If you want a conditional subpoena. I don't know that we're
3 going to receive anything. Your Honor may overrule the
4 petition. If Your Honor, I'm sorry, may grant the petition.

5 JUDGE WEDEKIND: Yeah.

6 MR. DAWSON: Your Honor may decline it. But to the extent
7 that we receive more recordings pursuant to the subpoena, we
8 may need to subpoena additional witnesses to come in and
9 testify about them. I don't know if Your Honor wants to deal
10 with that now or just see what we get.

11 JUDGE WEDEKIND: You know, I haven't seen the subpoena.
12 I'm not even sure the subpoena is X-gen (phonetic).

13 MS. OVIEDO: It's not -- because it didn't come to us.

14 JUDGE WEDEKIND: I saw the email and it copied me. So
15 that he said he's -- I didn't -- I wasn't -- is that what he
16 said, I'm not going to file it until the fifth day or I have
17 five days?

18 MR. DAWSON: He said well, I'm sorry, he said he'll file
19 it within the statutory period.

20 JUDGE WEDEKIND: Right, right, right.

21 MR. DAWSON: But I'm assuming that means five days. It's
22 not in the statute, but I'm assuming that's what it means.

23 JUDGE WEDEKIND: Within hopefully he would file sooner
24 than that. If it was here, I might actually direct him to
25 state his opposition sooner. Except that I don't even know

1 what you're asking for. I know you're asking for the actual
2 audiotapes?

3 MR. DAWSON: We asked for any audio or video recordings in
4 the Union's possession that were taken on the site of the
5 Arizona Foods distribution center.

6 JUDGE WEDEKIND: Okay. During a certain period of time?

7 MS. INESTA: I believe so, Your Honor.

8 MR. DAWSON: I believe we did.

9 MS. INESTA: I believe he was going back to the same --

10 JUDGE WEDEKIND: And that's it? That's all you asked for?

11 MR. DAWSON: That's it.

12 MS. INESTA: That's it.

13 JUDGE WEDEKIND: Okay. Well, all right, that's fine.

14 You've gotten what the General Counsel has and let's see what
15 is responsive. Hopefully, if he doesn't have anything, he'll
16 say that.

17 MR. DAWSON: If Mr. Crowley will stipulate that there's
18 nothing in the Union's possession other than what General
19 Counsel has provided, then there's no need to go through that
20 hoop. But --

21 JUDGE WEDEKIND: Well --

22 MR. DAWSON: I assume he knows what General Counsel's
23 provided and he's still filing the petition, so there may be
24 something else.

25 JUDGE WEDEKIND: When did serve it?

1 MS. OVIEDO: I mean we wouldn't propose that stipulation
2 to him though, because I don't think he knows that you're
3 willing to stipulate to that.

4 JUDGE WEDEKIND: When did you serve it? The subpoena?

5 MR. DAWSON: We served the subpoena on Tuesday I believe.

6 JUDGE WEDEKIND: Tuesday, the --

7 MR. DAWSON: Tuesday, the 8th.

8 JUDGE WEDEKIND: That was the day we started.

9 MR. DAWSON: Right, correct.

10 JUDGE WEDEKIND: So the fifth day would be Monday?

11 MR. DAWSON: Would be Tuesday because the weekend,
12 intervening weekend wouldn't count. So you essentially get a
13 week.

14 JUDGE WEDEKIND: Oh, you don't count the first day.

15 MR. DAWSON: Right.

16 JUDGE WEDEKIND: Well, the good news is is that General
17 Counsel is not going to be done with the case until Tuesday.
18 So I mean I was thinking well perhaps I could direct him to
19 file his petition by Monday. But you expect him to be here
20 Monday, Crowley?

21 MS. OVIEDO: He said he would be here next week. So I
22 don't know what day he plans to appear though.

23 JUDGE WEDEKIND: Yeah. Well --

24 MR. DAWSON: And then, I'm sorry.

25 JUDGE WEDEKIND: Yeah, I don't really want to, you know,

1 it's -- I'm in hearing, it's Friday, it's, you know, I'm not
2 sure how this is going to go down. If you have any
3 communications with him, General Counsel, you might just point
4 out that the issue is raised.

5 MS. OVIEDO: Not a problem.

6 JUDGE WEDEKIND: If his position is -- if he's going to
7 represent that there are none, that would certainly simplify
8 everything. But if you find out anything, let us know.

9 MS. OVIEDO: Okay.

10 JUDGE WEDEKIND: Okay.

11 MS. OVIEDO: We'll cc everyone.

12 MR. DAWSON: And again if he'll stipulate that and just so
13 that, you know, if you want -- if you communicate with him
14 before I do, if he'll stipulate that what you've provided to us
15 is all that they have, including no edits and so forth, you
16 know, we don't need to belabor the issue.

17 JUDGE WEDEKIND: Yeah.

18 MR. DAWSON: But just want to confirm. And then finally,
19 on the record, Your Honor, we ask -- we just wanted to serve --
20 this was filed electronically today. And we'll be sending UPS
21 copies with all due respect, Your Honor.

22 JUDGE WEDEKIND: I got it, sure.

23 MR. DAWSON: I'm not intending to insult Your Honor.

24 JUDGE WEDEKIND: I'll have to read it first; then I'll
25 decide.

1 MR. DAWSON: If there's anything insulting in it, Nancy
2 wrote it.

3 JUDGE WEDEKIND: Well, it won't be the first time.

4 MS. INESTA: Sure, throw me under the bus.

5 MR. DAWSON: Absolutely.

6 JUDGE WEDEKIND: Okay, that's fine. Thank you. Thanks
7 for the copy.

8 MR. DAWSON: Thank you, Your Honor.

9 MS. INESTA: Thank you, Your Honor.

10 JUDGE WEDEKIND: Okay. Lunch. Let's still shoot for 1.

11 MR. DAWSON: Thank you, Your Honor.

12 JUDGE WEDEKIND: Okay, off the record.

13 (Off the record at 12:16 p.m.)

14 JUDGE WEDEKIND: Okay. Let's go back on the record.

15 MS. DEMIROK: So, Your Honor, over the break I double
16 checked the records regarding Mr. Wallace's personnel file that
17 were produced via the subpoena request, and I just confirmed
18 that no, we did not get the termination report that was
19 testified to earlier. However, Respondent's counsel has given
20 me a hard copy of that over the break.

21 JUDGE WEDEKIND: Okay. Thank you for letting us know.

22 MR. DAWSON: Your Honor, if I may just clarify for the
23 record, if it matters.

24 JUDGE WEDEKIND: Okay.

25 MR. DAWSON: What had happened was the Region's subpoena

1 asked us to exclude worker's comp files. The termination
2 report was in a worker's comp file. We didn't review the
3 worker's comp file, because we weren't producing them and
4 that's how it got left out.

5 And so, you know, there was no intent to withhold that
6 document. We had -- we thought it had been produced. It's
7 exactly as described by Ms. Wright. So, you know, again, with
8 full apologies, and I'm not suggesting that it wasn't our
9 mistake. It was kind of -- you know, we had a short time
10 frame, they didn't ask for the worker's comp file, so we didn't
11 review them, and I mean that's what happened.

12 If it would help or make a difference to Your Honor, we
13 can certainly submit a declaration to that effect. If it
14 doesn't make a difference then, you know, we won't burden the
15 record with that.

16 JUDGE WEDEKIND: Well, I can't tell you what will make a
17 difference at this point. Is there any response from General
18 Counsel?

19 MS. DEMIROK: I guess I would just respond that, you know,
20 it doesn't -- this wasn't the only document that was missing
21 from the production request, and I'll just leave it at that.

22 JUDGE WEDEKIND: Okay. All right. That's fine.

23 MR. DAWSON: Thank you.

24 JUDGE WEDEKIND: Are you ready to call your next witness?

25 MS. OVIEDO: Yes, Your Honor. Counsel for the General

1 Counsel would like to call Mr. Bob Beake.

2 JUDGE WEDEKIND: Mr. Beake.

3 THE WITNESS: Can I bring this with me?

4 JUDGE WEDEKIND: Of course.

5 MS. OVIEDO: You may.

6 JUDGE WEDEKIND: Have a seat. Thank you. Could you raise
7 your right hand for me?

8 Whereupon,

9 **ROBERT BEAKE**

10 having been duly sworn, was called as a witness herein and was
11 examined and testified as follows:

12 JUDGE WEDEKIND: Thank you very much. Could you state
13 your full name and spell it for us?

14 THE WITNESS: Robert Beake, B as in boy -E-A-K-E.

15 JUDGE WEDEKIND: Thank you.

16 **DIRECT EXAMINATION**

17 Q BY MS. OVIEDO: Good afternoon, Mr. Beake. My name is --

18 A Good afternoon.

19 Q -- my name is Elise Oviedo. I'm counsel for the General
20 Counsel and a federal attorney. I'm going to be asking you
21 some questions today.

22 A Sure.

23 Q Do you commonly go by Bob?

24 A I do.

25 Q Okay. Is that what people call you at work?

1 A Yes.

2 Q Okay. And so are you employed?

3 A Excuse me?

4 Q Are you currently employed?

5 A Yeah, just so -- for the record, I have a hard time
6 hearing.

7 Q Oh, okay.

8 A Okay.

9 Q Good to know. I've a loud voice though.

10 A Okay.

11 Q I can reach --

12 A Sorry about that.

13 Q -- not a problem. Are you currently employed?

14 A Yes.

15 Q And have you reviewed any documents today in preparation
16 for your testimony?

17 A I have not.

18 Q Okay. Have you reviewed any documents at all in
19 preparation for this trial?

20 A I have not.

21 Q Okay. Have you reviewed any recordings in preparation of
22 this trial?

23 A I have not.

24 MS. OVIEDO: God bless you.

25 JUDGE WEDEKIND: God bless you.

1 MS. INESTA: Excuse me.

2 Q BY MS. OVIEDO: Have you reviewed any transcripts in
3 preparation of this trial?

4 A I have not.

5 Q Have you spoken with anyone in preparation of this trial?

6 A I have not.

7 Q No one?

8 A Well, other than our counsel.

9 Q And with whom specifically did you speak?

10 A Mr. Dawson -- Todd.

11 Q Okay. Anyone else?

12 A No.

13 Q Okay. Where are you currently employed?

14 A Shamrock Foods Company.

15 Q And in what capacity?

16 A Senior Vice-President of Human Resources.

17 Q Is that your official title?

18 A Yes, it is.

19 Q And how long have you held that position?

20 A Fourteen years.

21 Q When were you hired?

22 A May of 1979.

23 Q What position were you hired in?

24 A Commission sales.

25 Q How long did you hold that position for?

1 A Two years.

2 Q What position did you hold after that?

3 A A series of sales management positions.

4 Q And after that?

5 A Assistant general manager.

6 Q And how long did you -- how long were you the assistant
7 GM?

8 A That was let's see about three years, a little less than
9 three years.

10 Q And after assistant GM, what position did you hold next?

11 A I was brought into the Human Resources Department, not at
12 my current title.

13 Q What was your title at that time?

14 A It was VP of Human Resources.

15 Q And how long did you hold that position?

16 A This is probably not exactly accurate. I'm going to guess
17 between four and five years.

18 Q And after that, is that when you were promoted to Senior
19 VP of HR?

20 A That's correct.

21 Q Okay. And who do you answer to currently?

22 A I report directly to Kent McClelland, our President and
23 CEO, and his father, Norman McClelland, our Chairman.

24 Q You mentioned that Mr. Norman McClelland is the Chairman.
25 And do you have a Board of Directors?

1 A Yes, we do.

2 Q And who's on that Board?

3 A We have Norman McClelland, Kent McClelland, Phil Giltner,
4 we have Larry Yancey, we have -- these are -- those are
5 Shamrock Board Members -- inside Board Members. And we have
6 outside Board Members; we have John Norton, Ray Thurston, and
7 Dan Grubb.

8 Q How often does the Board meet?

9 A Quarterly.

10 Q And where do they meet?

11 A It varies. Typically, it would be in our corporate
12 offices, but we move it around to the other branches.

13 Q Do you maintain an office at your corporate office in
14 Phoenix?

15 A That is my office.

16 Q That is your office. Do you have any other offices?

17 A Now, you're referring to the corporate office at 3900 East
18 Camelback. That's where my office is.

19 Q Do you have any other offices besides --

20 A I do not.

21 Q Approximately how far away is your office from the Phoenix
22 warehouse?

23 A Probably -- depending upon traffic, 25 to 30 minutes.

24 Q Do you have a secretary?

25 A I do.

1 Q What's her name or his name?

2 A She's the -- she's an administrative assistant. Her name
3 is Ashley Amery, A-M-E-R-Y.

4 Q And how long has she been your assistant?

5 A We share her. Kent McClelland and I share Ashley.
6 Probably eight years -- seven or eight years, something like
7 that.

8 Q Where is Kent's office in relation to yours?

9 A Right next door.

10 Q Okay. Does anyone else share her as their --

11 A No, no.

12 Q Does anyone else have their office in your suite?

13 A Yes.

14 Q Who?

15 A We have our CFO Natalie Laackman, we have Norman
16 McClelland, we have our COO John Roussel, we have our Chief
17 Marketing Officer Ann Ocana, we have Karen Williams in that
18 suite, and we have Vince Daniels in that suite, and I believe
19 that's it.

20 Q Okay. And who reports to you in HR?

21 A Vince Daniels.

22 Q And what's his title?

23 A Vice President of Human Resources.

24 Q And who's below him?

25 A Well, his staff would be Karen Williams, Branch Muller.

1 Q I'm sorry, what was that last name?

2 A M-U-L-L-E-R. Just for the record and clarification, Vince
3 is my successor, I'm retiring. So we're right in the -- like
4 within a week or two of transitioning all the reporting over to
5 Vince, just for the record.

6 JUDGE WEDEKIND: One thing I've learned about HR people,
7 you can retire, but --

8 THE WITNESS: That's what our Chairman said. You can
9 never retire yourself --

10 JUDGE WEDEKIND: -- exactly. Right.

11 THE WITNESS: -- anyway.

12 JUDGE WEDEKIND: Right. Good luck.

13 THE WITNESS: Yeah, thanks.

14 Q BY MS. OVIEDO: Okay. So we said there's Vince Daniel, VP
15 of HR, he's your successor.

16 A So he reports directly to me. I mean there's about a two
17 week gap right now, but --

18 Q Okay.

19 A -- for all practical purposes, Vince reports to me. Then
20 his staff will be, in a couple of weeks, Karen Williams; Branch
21 Muller, M-U-L-L-E-R, he's our Risk Management and Safety
22 Director; Jim Cramer, who is our Director of Talent
23 Acquisition; Cindy Pimental, who is our -- for the lack of a
24 better definition -- Director of our Benefits. We call it
25 Associate Service Center today; and we have Monica Hergert, who

1 is charge of the -- what we call the Field HR Managers, and I
2 believe that's it.

3 Q How many field HR managers do you have? Let me specify.
4 How many do you have at the Phoenix warehouse?

5 A We have one.

6 Q Who is that?

7 A That would Heather Vines-Bright.

8 Q Does anyone report to her?

9 A Yeah, she actually does have one or two who reports.

10 Q Do you happen to know who they are?

11 A I know one, Carla Reyes, and I can't think of the other
12 one.

13 Q Do you know who Natalie Wright is?

14 A I do.

15 Q Who is she?

16 A Well, she's in -- she's now part-time working. She was in
17 HR, and she's now located at our corporate office.

18 Q And where does she fall in that hierarchy that you just
19 described to us?

20 A She would report in to Monica Hergert.

21 JUDGE WEDEKIND: Well, it's important to know when. I
22 mean what time period are we talking about?

23 Q BY MS. OVIEDO: Currently, she reports to Monica Herbert?

24 A Hergert, H-E-R-G-E-R-T.

25 Q And what about prior to her going part-time? Who did she

1 report to while she was still the HR Manager?

2 A Well, we had some change in structure. There was -- I
3 think when she was hired, she reported to a gentleman by the
4 name of Terry Martin, who is no longer with the company.

5 Q When did he leave the company?

6 A It's been over a year.

7 Q Okay.

8 A He and his family moved.

9 Q Who replaced him?

10 A Well, we didn't replace her -- we didn't replace him right
11 away, because we were going through a whole restructure after
12 we hired Vince.

13 Q So who currently holds Terry Martin's position?

14 A Heather Vines-Bright.

15 Q Okay. Could you please describe for us what your current
16 duties entail?

17 A At a high level, strategic planning along with the senior
18 leadership team, developing our long-term strategy for the
19 company, developing plans to support and develop strategies to
20 support the objectives of the company. That's primarily what
21 I'm doing right now.

22 Q Okay. Do you ever go to the Phoenix warehouse?

23 A On occasion

24 Q What would you go there for?

25 A It could be a meeting, it could be to visit associates.

1 Most of it is not scheduled, some of it is scheduled. We hold
2 -- there's occasion we hold meetings there.

3 Q When you say on occasion, monthly, quarterly, yearly?

4 A I don't think there's any regularity to that. It really
5 is just -- you know, depending upon business needs. We might
6 decide to hold a senior staff meeting there, because we have --
7 that's where we used to have all of our meetings before we had
8 our corporate offices. So we have good meeting facilities
9 there, et cetera.

10 Q You have conference rooms there?

11 A Yes, we do.

12 Q Okay. Could you give us an average, an approximation?

13 A Of?

14 Q How often you go to the Phoenix warehouse?

15 A I would say it could be once every couple of months.

16 Q Okay. Who attends the senior staff meetings, or, rather,
17 prior to May 2015, who attended the senior staff meetings?

18 A You mean every person on the senior staff. Is that the
19 question?

20 Q At the Arizona Phoenix facility.

21 A No, that's not what I meant. So we have a senior staff at
22 our company. That's Kent's senior staff, Kent McClelland's
23 senior staff. We move around the meeting locations.

24 Q When you say senior staff, could you please tell us who,
25 specifically, you refer to as senior staff or who's considered

1 senior staff?

2 A It's not my staff, it's Kent McClelland's staff.

3 Q Right, but who are those people?

4 A Okay. So you have Kent McClelland, you have Dan Carroll,
5 you have Ann Ocana, you have John Roussel, Larry Yancey,
6 Natalie Laackman, Kent Mullison, and myself.

7 Q And you and the rest of the senior staff members sometimes
8 meet at the Phoenix warehouse for meetings?

9 A Rarely, but to answer you -- but we have --

10 Q Okay.

11 A -- but it's rare.

12 Q Okay. When is the last time you had a senior staff
13 meeting at the Phoenix warehouse?

14 A I don't know. I can't recall.

15 Q Do --

16 A It's been a long time.

17 Q -- do you keep records of those meetings?

18 A I personally don't, no.

19 Q Are there -- does anyone take meeting minutes during those
20 meetings?

21 A Not at senior staff, no.

22 Q There's no secretaries there?

23 A There is not.

24 Q Are these meetings coordinated via e-mail?

25 A Through Outlook calendar.

1 Q Outlook calendar?

2 A Yeah.

3 Q Okay. Did you hold or was a senior staff meeting held in
4 April of 2015?

5 A Was there one held?

6 Q Yes.

7 A Yeah, sure. We have one a month.

8 Q Okay. Monthly?

9 A Yeah.

10 Q Was that held at the Phoenix warehouse?

11 A No.

12 Q Do you recall where it was held?

13 A Corporate.

14 Q Okay. Do you recall the day it was held?

15 A I don't.

16 Q Do you regularly hold them at the beginning of the month,
17 or the end of the month, or the middle of the month?

18 A It's usually within the first couple weeks, but it varies
19 depending upon Norman and Kent's schedules. Sometimes they
20 would have to be modified.

21 Q Do you recall whether the March 31st Town Hall meeting was
22 discussed at the senior staff meeting in April?

23 A I don't recall.

24 Q But you had just conducted the Town Hall meeting on March
25 31st; isn't that right?

1 A That is correct.

2 Q Okay. Wouldn't that have come up during the senior staff
3 meeting?

4 MR. DAWSON: Objection. I think the witness said he
5 didn't recall.

6 THE WITNESS: Yeah.

7 JUDGE WEDEKIND: Well, if he doesn't recall, typically we
8 allow a few more questions. Overruled.

9 THE WITNESS: So can you repeat the question?

10 Q BY MS. OVIEDO: Wouldn't it have come up if you had just
11 conducted the Town Hall meeting?

12 A Well, just to put things in context we had, I want to say,
13 28 meetings across the entire corporation. That was one of the
14 meetings. We generally discuss -- you know, that was the kind
15 of a state of the company meeting. All associates state of the
16 company meeting. And so, yeah, we asked for -- you know, how
17 did the meetings go, but nothing specific.

18 MS. OVIEDO: And, Your Honor, since I haven't done so, may
19 I proceed with 611(c)?

20 JUDGE WEDEKIND: Any objection?

21 MR. DAWSON: No objection.

22 JUDGE WEDEKIND: Yes.

23 Q BY MS. OVIEDO: The state of the company meetings, those
24 happen annually, right?

25 A Correct.

1 Q Okay. Are you always present for them?

2 A Not always.

3 Q Okay. Were you present at the one on March 31st?

4 A Yes.

5 Q And you conducted that one, right?

6 A Yes.

7 Q Okay. And there were hundreds of employees there, right?

8 A Yes.

9 Q Okay. And something happened at that meeting, right?

10 A You have to be more specific.

11 Q There was a question and answer session at the end of the
12 Town Hall meeting, correct?

13 A We do that at every meeting.

14 Q And there was an employee that asked about healthcare; is
15 that right?

16 A As I recall, that would be correct.

17 Q And he asked you if they could get their old healthcare
18 plan back, right?

19 A Yeah, that's correct. So just putting it in context
20 again.

21 Q That's okay though.

22 MR. DAWSON: Your Honor, she can't him how to answer the
23 question. He answered it yes.

24 JUDGE WEDEKIND: Well, I think he did answer it. I mean,
25 typically --

1 THE WITNESS: I understand.

2 JUDGE WEDEKIND: -- yeah.

3 THE WITNESS: I understand.

4 JUDGE WEDEKIND: I mean you can provide an explanation,
5 but one thing to also keep in mind is the other side's going to
6 get to ask you questions --

7 THE WITNESS: I got it.

8 JUDGE WEDEKIND: -- as well.

9 THE WITNESS: Yeah.

10 JUDGE WEDEKIND: Okay.

11 THE WITNESS: Sorry.

12 JUDGE WEDEKIND: Go ahead.

13 Q BY MS. OVIEDO: Actually, go ahead.

14 A No, that's fine.

15 Q Say what you were going to say.

16 A You go ahead.

17 Q He interrupted you, right?

18 A No.

19 Q No?

20 A He did not.

21 Q He asked you another question after his first question,
22 right, regarding the same topic?

23 A It was on healthcare, yes.

24 Q Did you take any notes of that Town Hall meeting?

25 A No. No notes were taken.

1 Q Were any of the employee's questions discussed after the
2 Town Hall meeting?

3 A Not with me.

4 Q Do you know who Thomas Wallace is?

5 A I know the name.

6 Q How do you know that name?

7 A Well, through these proceedings.

8 Q Prior to your notification of this trial, did you know who
9 Thomas Wallace was?

10 A No.

11 Q Have you ever --

12 A No, not --

13 Q -- heard his name?

14 A -- no.

15 Q Never seen his name?

16 A No. He just -- no. I couldn't pick him out if he was
17 sitting in this room today.

18 Q Why was Mr. Wallace fired?

19 A I don't know specifically why he was fired. Maybe you
20 could go further -- you know, a little deeper with the
21 question. He was fired, that's correct.

22 Q Could you tell us what you know about his termination?

23 A After -- so we have -- from my understanding, because I
24 don't get involved in terminations in my level. I mean, they
25 -- I just don't. I was informed, because I meet with Vince

1 Daniels on a daily basis to get updates. He told me that they
2 were going to terminate Mr. Wallace.

3 Q Vince Daniels told you this?

4 A Yes.

5 Q Was he telling you so that you could approve the
6 termination?

7 A No, he was not asking for approval.

8 Q Was he terminated yet at that point?

9 A I don't -- I'm not sure. I don't recall that.

10 Q When did Vince Daniels tell you this?

11 A It could have been a few days -- several days after the
12 meeting.

13 Q Then why did he tell you if he wasn't seeking your
14 approval?

15 A We had daily meetings to update.

16 Q Who else is present during these daily meetings?

17 A Just the two of us.

18 Q Is anyone --

19 A No.

20 Q -- in terms of like a secretary, or --

21 A No.

22 Q -- no?

23 A No.

24 Q Are these meetings face-to-face?

25 A Usually, yes.

1 Q If they're not --

2 A Unless we're traveling.

3 Q Are they at the corporate office?

4 A Yes.

5 Q When you met with Vince Daniels to discuss the termination
6 of Thomas Wallace, where were you?

7 A You mean physically in the building?

8 Q Were you at the corporate or were you at the warehouse?

9 A Corporate.

10 Q Does Vince -- and I'm sorry, maybe you already said this
11 -- does Vince Daniels have his office at corporate --

12 A Yes.

13 Q -- or at -- okay.

14 A Yes.

15 Q Does he maintain an office at the warehouse? No. Does he
16 update you on every termination?

17 A No.

18 Q He does not?

19 A No.

20 Q Okay. Do you know why specifically he brought up Thomas
21 Wallace then?

22 A I can't answer that.

23 Q Did you ask him any details about this particular
24 employee?

25 A No.

1 Q Didn't it seem out of the ordinary then that he would
2 bring up one employee when he doesn't usually tell you about
3 terminations?

4 A Well, I mean, obviously, it was in relationship to that
5 meeting. That much I did know.

6 Q Relationship to the March 31st meeting?

7 A Yes.

8 Q Why did he tell you -- or what -- pardon. What was the
9 reason why he was firing Mr. Wallace?

10 A I guess you would have to ask him.

11 Q He didn't tell you?

12 A He did.

13 Q What did he say?

14 A So he -- it was the fact that he stood up, made a gesture,
15 and walked out of a mandatory meeting.

16 Q A gesture?

17 A Yes.

18 Q Do you know where Thomas Wallace was standing during the
19 March 31st meeting?

20 A Back of the room.

21 Q Were you able to see him?

22 A Yeah.

23 Q What kind of gesture did he make?

24 A I did not see the gesture.

25 Q Okay. Were you looking at him as he was talking?

1 A Of course.

2 Q And asking questions?

3 A Yeah, of course.

4 Q But you didn't see him make a gesture?

5 A I did not.

6 Q Okay. And he asked his questions at the end of the
7 meeting; didn't he?

8 A Yeah, there were a lot of questions asked at the end of
9 the meeting.

10 Q Okay. But he was towards the end of the meeting?

11 A Uh-huh.

12 Q Okay.

13 JUDGE WEDEKIND: Yes or no.

14 THE WITNESS: Yes.

15 JUDGE WEDEKIND: Thank you.

16 Q BY MS. OVIEDO: Did Mr. Daniels describe what sort of
17 gesture Mr. Wallace allegedly made?

18 A He did.

19 Q What sort of gesture was that?

20 A It was --

21 MS. OVIEDO: Let the record reflect that the witness made
22 a --

23 MR. DAWSON: Sweeping.

24 MS. OVIEDO: -- sweeping gesture coming forward across --
25 I'm sorry.

1 JUDGE WEDEKIND: With his palm open. It was kind of like
2 a forward --

3 Q BY MS. OVIEDO: Like nah?

4 A I mean I don't know how you want to describe a wave,
5 but --

6 Q Raised his arm in the air and --

7 A -- yeah.

8 Q -- waved it forward.

9 A And then walked out, according to Vince.

10 Q You didn't see him walk out?

11 A No, I was redirected immediately to another question.

12 Q Where was Vince standing at the March 31st meeting?

13 A I can't recall exactly where he was standing.

14 Q Where were you standing?

15 A In front.

16 Q Who else was standing with you?

17 A There were lots of folks there. We had United Healthcare
18 there, we had our brokers there, we had managers there.

19 Q Which managers were there?

20 A You want me to name all the managers? I couldn't even
21 give you the list of all the managers, I apologize.

22 Q Would you say dozens of managers were there?

23 A Yeah, because -- if I can talk like this.

24 Q Sure.

25 A So when we have a meeting like that, so you'll have

1 representatives of the management team, it could be sales, it
2 could be accounting, it could be -- you know, all of
3 functioning areas, they will -- depending upon the schedules
4 that we have for the meetings, because they'll attend one of
5 those meetings. So there's -- there could be a dozen managers
6 in the meeting from various functional areas.

7 Q Okay. Would Vince have been standing with the rest of the
8 managers, if all the managers were upfront?

9 A Well, a lot of the managers would be sitting.

10 Q Okay.

11 A I can't -- I can't answer where Vince was --

12 Q Okay.

13 A -- actually standing.

14 Q That's okay. And Vince told you that that gesture was why
15 he was firing him -- being fired?

16 A Walking out of a mandatory meeting.

17 Q Walking out of a mandatory meeting.

18 A Right.

19 Q Were any other employees disciplined or discharged for
20 walking out of a meeting early?

21 A That meeting?

22 Q Yes.

23 A Nobody else did.

24 Q No one else walked out early?

25 A I can't answer that question.

1 Q You didn't see anyone else walk out early?

2 A I did not.

3 Q And -- but you didn't see Thomas Wallace walk out early
4 either?

5 A I did not.

6 Q Did Vince tell you or did you become aware of how soon
7 after the meeting -- let me rephrase. Had you finished your
8 PowerPoint when you opened up the question and answer session?

9 A I always do.

10 Q Okay. So the question and answer session was at the end
11 of the meeting?

12 A They always are.

13 Q Okay. In fact, there was only five minutes left at the
14 end of the meeting before -- when he -- after he asked his
15 question, right?

16 A I can't recall the exact timeline, but, yeah, the meetings
17 vary in length depending upon how I'm speaking or who's
18 speaking. So it might be a 45-minute meeting with, you know,
19 open questions until we have exhausted the questions, and then
20 we cancel the meeting.

21 Q In all of your years for working with this company, do you
22 know of anyone else who was ever terminated for walking out of
23 the meeting early?

24 A Personally speaking?

25 Q Yes.

1 A No, but that doesn't mean it didn't happen. It's just at
2 my level, I wouldn't know.

3 Q But you knew about Thomas Wallace; didn't you?

4 A Yeah, I already mentioned that.

5 Q Did Vince Daniels tell you that he was personally
6 offended?

7 A That he was personally offended?

8 Q Did Vince Daniels tell you he was personally offended?

9 A No, he didn't tell me he was personally offended.

10 Q Did he tell you whether anyone was offended?

11 A No, I don't -- yeah, I don't really understand the
12 question.

13 Q What else did Vince Daniels tell you regarding Thomas
14 Wallace's discharge?

15 A That was it, we made a decision to terminate him based on
16 his actions in the meeting.

17 Q We?

18 A No, he, not --

19 Q He? I'm pretty sure you just said --

20 A -- Vince, not me. Not me.

21 Q -- no?

22 A Vince.

23 Q You didn't have anything to do with his --

24 A I did not.

25 Q -- termination?

1 A I did not.

2 Q No?

3 A None.

4 MR. DAWSON: Your Honor, I have to object to the
5 mischaracterization. I thinks she said what did Vince say, and
6 Mr. Beake said -- you know, essentially, he didn't say he said
7 we were terminating -- I don't think he said we in the --
8 anyway.

9 JUDGE WEDEKIND: I think he did, and I think earlier they
10 said they. So it's fine. The transcript will show.

11 MS. OVIEDO: Your Honor, we pass the witness.

12 JUDGE WEDEKIND: Okay. Any questions at this time?

13 MR. DAWSON: Not at this time, Your Honor. Thank you.

14 JUDGE WEDEKIND: Okay. Thank you, Mr. Beake.

15 THE WITNESS: Thank you.

16 JUDGE WEDEKIND: It was short.

17 THE WITNESS: Yeah, thank you.

18 JUDGE WEDEKIND: That's good. We do have a sequestration
19 order in effect. Please don't discuss your testimony.

20 THE WITNESS: I understand that.

21 JUDGE WEDEKIND: Okay. I'm just going to say it anyway.
22 Don't discuss your testimony with any other witness or
23 potential witness until this proceeding is over.

24 THE WITNESS: I will not.

25 JUDGE WEDEKIND: Thank you very much.

1 THE WITNESS: Okay.

2 JUDGE WEDEKIND: Thanks. Well, that was quick. It's
3 only --

4 MS. OVIEDO: Yeah.

5 JUDGE WEDEKIND: -- it's only 20 minutes to 2. So do you
6 have another witness you would like to call at this time?

7 MS. DEMIROK: We do. We would like to call Mr. Michael
8 Wizner.

9 MR. DAWSON: Your Honor, we would object. Mr. Wizner's
10 been sitting in on the testimony. We did not stip to labor
11 organization status. And so, the General Counsel's on notice
12 that they would have to call a witness to that effect.

13 JUDGE WEDEKIND: He was named. I thought he was named
14 as --

15 MS. OVIEDO: He's the named designee.

16 JUDGE WEDEKIND: -- he was named as the Union's
17 representative at this hearing.

18 MR. DAWSON: He was, okay. All right.

19 JUDGE WEDEKIND: Yeah, during the discussion of the
20 sequestration order.

21 MR. DAWSON: Okay.

22 JUDGE WEDEKIND: And do I have that correct?

23 MS. OVIEDO: Yes, Your Honor.

24 JUDGE WEDEKIND: I think I wrote it down.

25 MR. DAWSON: Okay. I don't see the transcript, but

1 I'll --

2 JUDGE WEDEKIND: Okay. Sure.

3 MR. DAWSON: -- but if it happened, it happened.

4 JUDGE WEDEKIND: That was my understanding.

5 MR. DAWSON: Can we take a five-minute recess, so I can --

6 JUDGE WEDEKIND: Sure.

7 MR. DAWSON: -- walk Mr. Beake out?

8 JUDGE WEDEKIND: Sure. Let's go off the record for five
9 minutes.

10 (Off the record at 1:39 p.m.)

11 JUDGE WEDEKIND: Next witness.

12 MS. OVIEDO: Your Honor, Counsel for the General Counsel
13 would like to call Mr. Michael Wizner.

14 JUDGE WEDEKIND: Is it Wizner?

15 THE WITNESS: Wizner.

16 JUDGE WEDEKIND: Wizner. Can you raise your right hand
17 for me?

18 Whereupon,

19 **MICHAEL WIZNER**

20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:

22 JUDGE WEDEKIND: Thank you very much. Could you spell
23 your name for us, first and last name?

24 THE WITNESS: Michael, M-I-C-H-A-E-L, middle initial is P
25 for Peter, Wizner, W-I-Z-N-E-R.

1 JUDGE WEDEKIND: Thank you.

2 **DIRECT EXAMINATION**

3 Q BY MS. OVIEDO: Good afternoon, Mr. Wizner, how are you?

4 A Fine.

5 Q Are you currently employed?

6 A Yes, I am.

7 Q Where are you currently employed?

8 A I am the part-time business agent/financial secretary for
9 the Bakery Confectionary Tobacco and Grain Millers
10 International Union, Local 232.

11 Q And how long have you held that position?

12 A I'm just finishing my fourth year in that chair.

13 Q Have you ever held any other positions?

14 MS. OVIEDO: I'm going to refer to it -- call it as the
15 Union, just so -- because it's a mouthful.

16 MR. DAWSON: No objection.

17 THE WITNESS: Okay. Yes, before I was a business agent, I
18 was the Vice President, and I was Vice President for about two
19 years.

20 Q BY MS. OVIEDO: Okay.

21 A Before I was Vice President, I was a shop steward.

22 Q And how long were you a shop steward for?

23 A About a year-and-a-half.

24 Q And when you were a shop steward, how many different
25 contracts did you oversee?

1 A As a shop steward just one.

2 Q Okay. And with whom?

3 A It was with Holsum Bakery in Phoenix, Arizona.

4 Q Okay. Does the Union have -- well, GC-16. Is the Union
5 an international union?

6 A Yes, it is.

7 Q Do you know how many states it's present in?

8 A Well, it's present in the 50 states of the United States
9 plus the -- I'm not sure how many provinces there are in
10 Canada, but it's also in Canada.

11 Q Okay. In Phoenix, do you know how many members there are
12 currently?

13 A We have about 225 current.

14 Q Mr. Wizner, I've handed you what's been previously marked
15 for identification as GC 16.

16 A Uh-huh.

17 Q Do you recognize that document?

18 A This is a copy of the International Constitution, which
19 governs the Bakers Union.

20 Q Now, are you familiar with that document?

21 A I have gone through it. It's a lot to swallow in one
22 step, but, yeah, I know a little bit about it, yes.

23 Q Okay.

24 MS. OVIEDO: GC would move to admit Exhibit number 16.

25 MR. DAWSON: No objection, Your Honor.

1 JUDGE WEDEKIND: I hate to admit it, because it's so
2 thick, but thank God for electronic files. It's received.

3 **(General Counsel Exhibit Number 16 Received into Evidence)**

4 THE WITNESS: Yes, sir, it's a mouthful.

5 Q BY MS. OVIEDO: As business agent, what are your current
6 duties?

7 A The duties of the business agent/financial secretary --

8 Q Oh, pardon me.

9 A -- okay.

10 Q Financial secretary.

11 A Okay. The business agent portion of it is to run the
12 office, to maintain all records, and to settle and try to
13 mediate grievances that come up with the various shops from
14 time to time. The job of the financial secretary is I handle
15 all money that comes into the office, I have to account for
16 every penny that comes in, I have to provide the necessary tax
17 forms, and then I have to also write out the checks in order to
18 pay the monthly bills.

19 Q Are there any employers you currently deal with concerning
20 the grievances?

21 A I have three that I deal with.

22 Q And who are those employers?

23 A I have Bay State Milling Company, which is located in
24 Tolleson, Arizona. I have Flowers Foods, which is currently
25 known as Holsum Bakery here in Phoenix, Arizona. And then I

1 have Bimbo Bakery, which is also located in Phoenix, Arizona.

2 Q And do you have contracts with those employers?

3 A Yes, we do.

4 Q And are you familiar with those contracts?

5 A Yes, I am.

6 MS. OVIEDO: Are we on --

7 JUDGE WEDEKIND: 17.

8 MS. DEMIROK: This is 18.

9 MS. OVIEDO: Okay.

10 Q BY MS. OVIEDO: Mr. Wizner, does the Union have any rules
11 that it goes by in terms of its internal ordinances and
12 regulations?

13 A The Local Union has a set of bylaws, and these rule --
14 these bylaws govern this Local Union --

15 Q Okay.

16 A -- and the operation of such.

17 Q How many officers does the Local have?

18 A We have -- if we were fully staffed, we would have 15.

19 Right now, I believe we only have 12.

20 Q Okay. Does that include shop stewards?

21 A I'm sorry?

22 Q Does that include shop stewards?

23 A No, it does not.

24 Q Okay. Could you run through up, please, who the officers
25 are?

1 A The president is Mr. Robert Kinsley. He works for Bimbo
2 Bakery. The vice president is Mr. Edward Schrant. He works
3 for Bimbo Bakery. I am the secretary -- I am the business
4 agent and financial secretary. The sergeant at arms is Mr.
5 Steve Miller. He works for Holsum Bakery.

6 The trustees at the moment are Sheryl Kennedy. She works
7 for Holsum Bakery. And Orlando Walker. He works for Bimbo
8 Bakery. The -- let's see. Trustees -- the chief shop stewards
9 are Julio Martinez. He works for Holsum. Rosalinda Cavello
10 Vargas. She works for Bimbo Bakery. And Eric Lewis works for
11 Bay State Milling. The E-Board members, we are short one E-
12 Board member at the moment. The E-Board member for Bay State
13 Milling is Barnaby Landrose. And the E-Board member for Bimbo
14 is -- boy, I can't remember who that is, but that's --

15 Q That's okay.

16 A -- then the -- we also have a recording secretary is Cezar
17 Leon, and I believe that's everybody we have on our staff.

18 Q Okay. And as for shop stewards, how many do you have for
19 each of the companies that you listed?

20 A Each company has a chief shop steward, and then they have
21 between one and five shop stewards, depending upon the number
22 of members at the company. The greatest number is at Holsum,
23 and they have five.

24 Q And who's the chief shop steward there?

25 A At Holsum, it is Julio Martinez.

1 Q And what do his duties include?

2 A His duties are to file grievances, to make sure that
3 people abide by the company rules, and that they do their jobs
4 properly, and he is also to try to see about telling people why
5 they should join a union, and that's basically what he does.

6 Q Okay. I'm handing you what's been marked for
7 identification as GC Exhibit 17. Do you recognize that
8 document?

9 A That is a copy of the bylaws of Local 232.

10 Q Are those the bylaws that you mentioned earlier?

11 A Yes.

12 Q Will you page through that document for me, please?

13 A Sure.

14 Q Let me know when you're done paging through.

15 A Okay.

16 Q Does that document accurately reflect the Union bylaws for
17 the Local?

18 A Yes, it does.

19 Q Okay.

20 MS. OVIEDO: GC would like to move to admit GC 17.

21 MR. DAWSON: No objection, Your Honor.

22 JUDGE WEDEKIND: It's received.

23 **(General Counsel Exhibit Number 17 Received into Evidence)**

24 Q BY MS. OVIEDO: Mr. Wizner, I'm handing you what's been
25 previously marked for identification as GC Exhibit 18. Could

1 you please take a look at that document and let me know when
2 you're done paging through it.

3 A Okay.

4 Q Do you recognize that document?

5 A This is a copy of the collective bargaining agreement that
6 is currently in force between Bimbo Bakeries and the Local
7 Union.

8 Q Okay.

9 MS. OVIEDO: GC would like to move to admit Exhibit number
10 18.

11 MR. DAWSON: No objection, Your Honor.

12 JUDGE WEDEKIND: It's received.

13 **(General Counsel Exhibit Number 18 Received into Evidence)**

14 Q BY MS. OVIEDO: Mr. Wizner, does the Union have any other
15 affiliations, AFL-CIO, CIOs?

16 A Yes, we are affiliated with the AFL-CIO, with the CLC.
17 I'm not exactly sure what that stands for. I believe that's
18 the Canadian Labor Congress. And --

19 MR. DAWSON: Objection as speculation. I'm sorry. It's
20 Friday, I apologize. I think you're right, actually.

21 THE WITNESS: Well, I was wondering why I had that
22 Canadian flag on my desk. I've always -- I've been sitting
23 there looking at that figuring what is this for.

24 MR. DAWSON: I'm sorry, it's Friday afternoon. I'm sorry.

25 THE WITNESS: That's okay.

1 Q BY MS. OVIEDO: And do employees attend Union meetings?

2 A Yes, they do.

3 Q How often do you have Union meetings at the Local?

4 A Every four months.

5 Q Where's your -- do you have a Local hall here in Phoenix?

6 A Our Local office is located at 3116 North 16th Street.

7 Q And are there internal union elections?

8 A Yes.

9 Q And do employees go to those?

10 A Not at the election themselves. The way an election is
11 held is every three years a person -- we have nominations that
12 takes place in January and if more than one person is nominated
13 for an office, it automatically triggers an election. Any
14 person who is running for office is not allowed to be on the
15 election committee.

16 An election committee is elected from the general
17 membership, and it normally consists of four people. There's a
18 chairperson, and then there's one person from each shop. Then
19 that election committee then gets together, and they make out
20 the ballots, the envelopes, and they send out ballots to
21 everyone at their last known address.

22 Then those people have a chance to vote. We normally give
23 them about two weeks to vote and the votes come back to a post
24 office box that is located on 20th Street in Camelback. The
25 election committee goes over there, retrieves the ballots, and

1 then they count them.

2 And the -- anyone who has not received their ballot is
3 encouraged to come to the office, they're given their ballot,
4 because it has been returned to the office as undeliverable,
5 and they're given their ballot, and they are allowed to do
6 whatever they want to do. If they want to tear it up, that's
7 fine. If they want to vote, that's great. It's up to them.

8 Q Mr. Wizner, I'm handing you what's been previously marked
9 for identification as GC-19. Would you go ahead and take a look
10 at that and page through it. Let me know when you're finished.

11 A Okay.

12 Q Do you recognize that document?

13 A This is a copy of the current collective bargaining
14 agreement between Holsum Bakery and the Local Union.

15 MS. OVIEDO: GC would move to admit GC 19.

16 MR. DAWSON: No objection.

17 JUDGE WEDEKIND: It's received.

18 **(General Counsel Exhibit Number 19 Received into Evidence)**

19 Q BY MS. OVIEDO: Mr. Wizner, I'm handing you what's been
20 previously marked for identification as GC Exhibit 20. Go
21 ahead and take a look at that and let me know when you're
22 finished.

23 A Okay.

24 Q Do you recognize that document?

25 A This is a copy of the current collective bargaining

1 agreement between Bay State Milling Company of Tolleson,
2 Arizona and the Local Union.

3 MS. OVIEDO: Move to admit GC-20.

4 MR. DAWSON: No objection, Your Honor.

5 JUDGE WEDEKIND: It's received.

6 **(General Counsel Exhibit Number 20 Received into Evidence)**

7 Q BY MS. OVIEDO: Do you have any personal experience
8 negotiating any of these agreements?

9 A Yes.

10 Q Which ones?

11 A I've negotiated the Bay State and the Bimbo contract.

12 Q And under these contracts, does the Union represent
13 employees with regard to their conditions of work such as
14 grievances, labor disputes, wages, rates of pay, or hours of
15 employment?

16 A Oh, yes.

17 Q Okay. Do you personally handle grievances?

18 A Yes, I do.

19 Q You do. I'm handing you what's been previously identified
20 as GC-21. Take a moment to look it over.

21 A Uh-huh.

22 Q Do you recognize this document?

23 A This is a copy of a grievance that came into my office
24 from a Drexel Blakes. He works at Bimbo Bakery. Mr. Blakes
25 was complaining that a foreman was harassing him, when the

1 foreman was just simply giving him a lawful order. And this is
2 what I would call a frivolous grievance.

3 Q Did you personally receive this grievance?

4 A The grievance was delivered to the office by the President
5 of the Union, Robert Kingsby.

6 Q Could you walk us through what happens when an employee
7 files a grievance?

8 A When an employee files a grievance, the first step is that
9 it is investigated. Depending on which shop steward is
10 available at the time, a shop steward will go around, and he
11 will ask questions, and the questions are basically who, what,
12 when, where, why, and how.

13 With this particular grievance, the investigation showed
14 that -- well, I'm going to quote the grievance, "I was harassed
15 by S. Hinton." Well, that's Shane Hinton, and Shane is a
16 foreman. He's a Union member. And when we checked into the
17 allegation, all Shane had done is just tell him to do his job,
18 so.

19 Q And did you personally investigate this grievance?

20 A No, Robert Kingsby and Ed Schrant are the two shop
21 stewards at the location this handled -- was at. Bimbo has two
22 locations. They have their main plant, which is on 7th Avenue
23 and Van Buren, and this location is 34th Avenue and Van Buren.
24 This is the depot.

25 Q And is this the standard grievance form that you use?

1 A Yes.

2 Q And is that true for all three companies, not just Bimbo?

3 A Yes, it's the same in all companies.

4 MS. OVIEDO: GC would move to admit Exhibit number 21.

5 MR. DAWSON: No objection, Your Honor.

6 JUDGE WEDEKIND: It's received.

7 **(General Counsel Exhibit Number 21 Received into Evidence)**

8 MR. DAWSON: I don't know if you want to -- well, it's not
9 our exhibit, but I don't know if you want to redact the names
10 before it goes into the record. We have no objection to that,
11 but I guess it's not our exhibit.

12 Q BY MS. OVIEDO: Does the Union have any objection?

13 A To what?

14 Q To this grievance being admitted as part of the record?

15 A No, I -- no.

16 JUDGE WEDEKIND: There's no other identifying information
17 other than the names, so --

18 THE WITNESS: Uh-huh.

19 JUDGE WEDEKIND: -- it's okay with me to go in the way it
20 is. If you have any documents, obviously, that have additional
21 identifying information, Social Security numbers, obviously,
22 and perhaps others, typically, it should be redacted.

23 THE WITNESS: But we don't put out things like that.

24 JUDGE WEDEKIND: Yeah.

25 Q BY MS. OVIEDO: Mr. Wizner, I've handed you what's been

1 marked as GC Exhibit 22. Would you take a look at -- over it,
2 please?

3 A Yes.

4 Q Do you recognize this document?

5 A Yes.

6 Q How do you recognize this document?

7 A This is a grievance from Holsum Bakery. This was filed by
8 -- I believe, it's Julio Martinez for Mr. Gary DeSanty, who was
9 complaining that he was not treated with dignity, justice, and
10 respect. That is a specific clause in that contract that says
11 the company must treat people with dignity, justice, and
12 respect.

13 And what ended up happening with this grievance is the
14 person that told Mr. DeSanty that he was a terrorist, who was a
15 -- and who was and still is a supervisor over there, has
16 apologized, and the supervisor of the shift also apologized.
17 And so, what we have done is we have withdrawn this grievance,
18 we're satisfied, and that's all it was to it.

19 Q And did you have personal knowledge of this grievance?

20 A Yes.

21 Q What was your involvement?

22 A I actually went over to the bakery, and I talked to Gary
23 about what had happened, and he was upset that someone would
24 call him a name for no reason. Just -- he was just out there
25 on the floor. I don't know, maybe his hair was parted the

1 wrong way that day.

2 I'm not sure, but we -- you know, I told him file the
3 grievance, I took it in, we talked about it, the company
4 settled it, and that's all there is to it.

5 Q Okay. Now, when you settle a grievance is there a record
6 kept of that?

7 A Yes.

8 Q How are those records kept?

9 A I have a computer program in my office where you will find
10 this grievance. In fact, you will find all of the grievances.
11 The -- what happens with the grievance then is that once it is
12 finalized, the hard copy goes into a filing cabinet, which is
13 kept under lock and key, and the grievances are listed by the
14 name of the company and are just -- are put in order of their
15 date.

16 MS. OVIEDO: GC would move at this time to admit Exhibit
17 number 22.

18 MR. DAWSON: No objection, Your Honor.

19 JUDGE WEDEKIND: It's received.

20 **(General Counsel Exhibit Number 22 Received into Evidence)**

21 JUDGE WEDEKIND: Are we almost done with this line of
22 questioning? How many more exhibits do you have?

23 MS. OVIEDO: Well, I wanted to get in at least one
24 grievance under each contract.

25 JUDGE WEDEKIND: Why?

1 MS. OVIEDO: Because they are refusing to stipulate to the
2 labor organization status, and I just want to make sure that
3 it's very clear for the record that the Union is a labor
4 organization as defined by the Act.

5 JUDGE WEDEKIND: Does it require them to negotiate and
6 administer more than one contract?

7 MS. OVIEDO: It does not, Your Honor, but --

8 JUDGE WEDEKIND: So why do we have to do three?

9 MS. OVIEDO: We already have all three contracts in.

10 JUDGE WEDEKIND: All right. If --

11 MR. DAWSON: If it makes it easier, if Mr. Wizner
12 testifies that it's a grievance, we'll stipulate to the
13 authenticity and to its admission.

14 MS. OVIEDO: Just allow me this last one, and then --

15 JUDGE WEDEKIND: Okay. Sure.

16 MS. OVIEDO: -- we can finish with that.

17 Q BY MS. OVIEDO: Mr. Wizner, I'm handing you what's been
18 previously marked for identification as GC-23. Would you take
19 a look over that document for me, please?

20 A Okay.

21 Q Do you recognize that document?

22 A This is a grievance that I requested Mr. Ed Schrant to
23 file and this is also with Bimbo.

24 Q Oh --

25 A And --

1 Q -- I'm sorry.

2 A -- that's okay. Oh, I shouldn't say that. I think the
3 Judge should say okay.

4 JUDGE WEDEKIND: So the first one was from Bimbo?

5 THE WITNESS: The first one was from Bimbo --

6 JUDGE WEDEKIND: Okay.

7 THE WITNESS: -- that was filed by an individual.

8 JUDGE WEDEKIND: Yeah.

9 THE WITNESS: This has been filed, actually, by a shop
10 steward.

11 JUDGE WEDEKIND: Yeah.

12 Q BY MS. OVIEDO: Do you handle grievances like this at Bay
13 State Milling?

14 A Oh, yes.

15 Q And also at Holsum?

16 A Oh, yes.

17 Q Okay. What -- do you know how much money -- well.

18 MS. OVIEDO: Your Honor, at this time, GC would make a
19 motion for a ruling on the Union status as a labor
20 organization.

21 JUDGE WEDEKIND: Do you intend to put on any contrary
22 evidence?

23 MR. DAWSON: We do intend to cross-examine this witness --

24 JUDGE WEDEKIND: Okay.

25 MR. DAWSON: -- with Your Honor's leave.

1 JUDGE WEDEKIND: Are you ready to pass the witness?

2 MS. OVIEDO: Yes, we're ready to pass.

3 JUDGE WEDEKIND: Okay.

4 **CROSS-EXAMINATION**

5 Q BY MR. DAWSON: Mr. Wizner, is it okay if I call you Mike?

6 A My last name is Wizner, sir.

7 Q Oh, I'm sorry. I'm sorry. Is it okay if I call you Mike
8 or would you rather --

9 A Sure, go right ahead.

10 Q Mike, you've -- I think you mentioned that you bargained a
11 couple of these agreements, correct?

12 A I've worked on them, yes.

13 Q Okay. And are those the only agreements that you've
14 negotiated or have you negotiated some others as well?

15 A I've negotiated others. These are the --

16 Q Okay.

17 A -- these are the current ones that are in force.

18 Q Got it. Okay. And just roughly -- and I'm sure it's a
19 large number, but roughly how many contracts have you
20 negotiated?

21 A Five, I believe, right now.

22 Q Okay.

23 Q Any first contracts?

24 A No, not yet.

25 Q But you know about negotiations, right?

1 A Oh, yes.

2 Q And you know what you have to do if you did have a first
3 contract?

4 A If there is a first contract -- well, first of all, you
5 might be operating under a slight misconception.

6 Q Uh-huh.

7 A I don't negotiate contracts alone.

8 Q I understand.

9 A Okay.

10 Q And I'm sorry -- I'm sorry, Mike, you have somebody from
11 the shop there, I would assume, right?

12 A Well, not only that, but the International Union has a
13 professional negotiator who is in charge of negotiating. I
14 simply represent the Local Union at the first level.

15 Q Okay. Got it. Got it. But you do know about negotiating
16 contracts, generally --

17 A Oh, yeah.

18 Q -- correct?

19 A Uh-huh.

20 Q All right. And you know, at least generally, what you
21 have to do if you sat down on a first contract?

22 A I have read about it. I have never done it before.

23 Q Okay.

24 A It's just --

25 Q But when you sit down to negotiate --

1 MS. OVIEDO: Objection. He's just stated he has no
2 personal knowledge.

3 MR. DAWSON: I'm not -- my question was when you sit down
4 to negotiate, not when you sit down to negotiate a first
5 agreement, and he says he has sat down to negotiate.

6 JUDGE WEDEKIND: Is that true?

7 THE WITNESS: Yes, I have sat.

8 JUDGE WEDEKIND: Okay. Go ahead.

9 Q BY MR. DAWSON: So when you sit down to negotiate both
10 sides can make proposals, right?

11 A I guess.

12 Q The Union can make a proposal, the company can make a
13 proposal.

14 A Yes.

15 Q And pretty much anything that's even tangentially related
16 to the workplace can go on the table.

17 A That's correct.

18 Q That's true, right? And if you're starting with the first
19 contract, there's no -- from what you've read --

20 MS. OVIEDO: Objection.

21 Q BY MR. DAWSON: -- the understanding from what you read --

22 MS. OVIEDO: Objection. Relevance.

23 JUDGE WEDEKIND: What's the relevance?

24 MR. DAWSON: -- the relevance -- I'll get to the relevance
25 if Your Honor will give me three questions.

1 JUDGE WEDEKIND: Well, first of all, now you're asking
2 about first contracts, and he said he hasn't done any.

3 MR. DAWSON: He said he read about it, and I asked him
4 based on what he read.

5 JUDGE WEDEKIND: Well, what do we care about that? I've
6 read about first contracts too?

7 MR. DAWSON: Well, I think it does -- I think there are
8 some --

9 JUDGE WEDEKIND: He's not -- he's not -- are you an expert
10 on first contracts?

11 THE WITNESS: No.

12 MR. DAWSON: -- if I -- I would prefer to explain this
13 outside of the --

14 JUDGE WEDEKIND: Okay. Would you like to step out?

15 THE WITNESS: Sure.

16 JUDGE WEDEKIND: Sure. Okay.

17 MR. DAWSON: I'm sorry, Mike, I didn't mean to cause an
18 accident there.

19 JUDGE WEDEKIND: Okay.

20 MS. OVIEDO: Yeah, he just --

21 MS. OVIEDO: Oh, no, we had our cord, and he tripped.

22 MR. DAWSON: Your Honor, there's allegations that the
23 Company violated -- I believe it's in paragraph -- oh, boy, I
24 should have had my page turned to it, but there's an allegation
25 that the company violated the Act by saying that through

1 collective bargaining the company doesn't have to agree to
2 anything. And I think there was another allegation that they
3 made a statement that kind of everything -- either -- depending
4 on how you phrase it, starts at zero, starts with a blank
5 slate.

6 I just want to ask Mr. Wizner --

7 MS. OVIEDO: Wizner.

8 MR. DAWSON: -- Wizner, doggone it.

9 UNIDENTIFIED FEMALE: Is it "ner" or "mer", because I
10 thought you said M-E-R?

11 MR. DAWSON: I think it's "ner."

12 MS. DEMIROK: "Ner." Wizner.

13 MS. OVIEDO: Wizner.

14 UNIDENTIFIED SPEAKER: Thank you.

15 MR. DAWSON: And I just want to ask Mr. Wizner, isn't that
16 true. Isn't that a true statement that when you start on a
17 first contract, from what you've read, you're starting with
18 nothing, and you're working on all of the articles.

19 MS. OVIEDO: Actually, it's not a true statement that you
20 start with nothing.

21 MR. DAWSON: It's not an untrue statement. From the
22 perspective of an agreement, you start with nothing.

23 MS. OVIEDO: Your Honor -- Your Honor, it's outside of the
24 scope of direct.

25 MR. DAWSON: It doesn't matter. The Rules of Evidence

1 don't apply strictly. He's on the stand. I can ask him.
2 That's -- I mean that's -- there's no hard and fast rule that
3 we're struck out. If we have to, we can subpoena him back to
4 the stand, and bring him back up here, and make him sit up
5 there, and we can -- you know, we can ask him the questions.
6 But he's here, and there's no reason not to.

7 MS. DEMIROK: Your Honor, if I may. I think the Board
8 decides what statements are in violation of the Act. I don't
9 think Mr. Wizner is one who can state, you know, what is or is
10 not a violation. And for that reason, I don't think his
11 testimony on this topic would be of any relevance.

12 JUDGE WEDEKIND: Sustained. The objection is sustained.

13 MR. DAWSON: Thank you, Your Honor.

14 MS. OVIEDO: Do you have any additional questions for him?

15 MR. DAWSON: I do. Yeah, I absolutely do.

16 MS. OVIEDO: Let me go get him.

17 JUDGE WEDEKIND: It's sustained on a number of grounds.
18 It's beyond the scope of direct, he's not an expert, and
19 furthermore, I don't think it's relevant what his testimony is
20 about an allegation in the complaint that he was not personally
21 involved in.

22 MR. DAWSON: Well, no, maybe -- Your Honor, first of all,
23 I'm going to have object on the record. I believe it is -- I
24 believe we have the right to exceed the scope of cross.

25 JUDGE WEDEKIND: You have the right if I allow you to.

1 MR. DAWSON: I --

2 JUDGE WEDEKIND: And I have the discretion not to allow
3 you to.

4 MR. DAWSON: -- I understand.

5 JUDGE WEDEKIND: And you don't have a right under the
6 Rules of Evidence, and you know that.

7 MR. DAWSON: I do -- I know that --

8 JUDGE WEDEKIND: You do know that. Okay.

9 MR. DAWSON: -- we don't have under the Federal Rules of
10 Evidence. Also, the Federal Rules of Evidence don't apply
11 strictly in these proceedings.

12 JUDGE WEDEKIND: You don't have a right under our rules
13 either.

14 MR. DAWSON: But --

15 JUDGE WEDEKIND: You can let the -- you can let him back
16 in.

17 MR. DAWSON: -- not unless I do -- if I can just state my
18 objection for the record that we weren't allowed to enter that.
19 If we could hold one more time. I mean if we're not going to
20 be allowed to enter any examination concerning -- you know, I
21 was going to ask Mr. Wizner, for example --

22 JUDGE WEDEKIND: Hold on. Hold on.

23 MR. DAWSON: -- yeah, hold on one second.

24 JUDGE WEDEKIND: Hold on.

25 MS. OVIEDO: Oh, I'm sorry.

1 MR. DAWSON: My fault. I'm sorry. I'm sorry. Just as an
2 offer of -- I guess I'll make an offer of proof. We were going
3 to ask Mr. Wizner -- you know, there's allegations about the
4 Kent McClelland letter, about they didn't want any kind of
5 threats or insults, coercive behavior.

6 I just want to ask Mr. Wizner is that something the Union
7 condones. And my assumption, like most unions, is the Union
8 doesn't condone that, and that they wouldn't tolerate it from
9 their members.

10 JUDGE WEDEKIND: Why is that relevant?

11 MR. DAWSON: Well, because -- why is the company held to a
12 different standard. I mean I understand General Counsel's
13 position.

14 JUDGE WEDEKIND: Why is it relevant what the Union thinks
15 about it? The issue here is what the Employer said and how a
16 reasonable employee would interpret it, which is an objective
17 standard. You're not making any headway with me on this. Do
18 you have any other arguments to make?

19 MR. DAWSON: I do not, Your Honor.

20 JUDGE WEDEKIND: Okay. Let's let him back in. And, you
21 know, the only reason this gentleman is on the stand is because
22 you would not stipulate to labor organization status. That's
23 why we're here --

24 MR. DAWSON: I understand that, Your Honor.

25 JUDGE WEDEKIND: -- and that's what the cross-examination

1 is going to be limited to.

2 MR. DAWSON: I understand.

3 JUDGE WEDEKIND: Any other questions on that?

4 MR. DAWSON: No further questions, Your Honor.

5 JUDGE WEDEKIND: Okay.

6 MS. OVIEDO: Before you -- did we move to admit GC 23?

7 JUDGE WEDEKIND: You did not.

8 MS. OVIEDO: Could we move at this time to admit it?

9 JUDGE WEDEKIND: Any objection?

10 MR. DAWSON: No objection, Your Honor.

11 JUDGE WEDEKIND: It's received.

12 **(General Counsel Exhibit Number 23 Received into Evidence)**

13 JUDGE WEDEKIND: Any other questions?

14 MS. OVIEDO: No, Your Honor.

15 JUDGE WEDEKIND: Okay. You're excused. Thank you very
16 much.

17 THE WITNESS: Do you want me to just leave this?

18 JUDGE WEDEKIND: Just leave it there.

19 MS. OVIEDO: Just leave it there.

20 JUDGE WEDEKIND: Okay. What would you like to do now?
21 Any other witnesses for today?

22 MS. OVIEDO: No, Your Honor. At this time, can we move to
23 admit -- or, I'm sorry, move to have a ruling on the Union's
24 status as a labor organization?

25 JUDGE WEDEKIND: Do you have any contrary evidence?

1 MR. DAWSON: Your Honor, we do not.

2 JUDGE WEDEKIND: Okay. I haven't heard anything to
3 indicate that they're not, and I've heard plenty of evidence of
4 indicate that they are. So, yes, based on the evidence and the
5 record, so far, the Union qualifies as a labor organization
6 under the -- as defined in the Act.

7 MS. OVIEDO: Okay. Thank you, Your Honor.

8 JUDGE WEDEKIND: Sure.

9 MS. OVIEDO: I believe Respondent's counsel has indicated
10 that it has a 3 p.m. flight to catch.

11 JUDGE WEDEKIND: Well, you would like to end at 3 p.m.?

12 MR. DAWSON: Right. Correct.

13 JUDGE WEDEKIND: Yeah.

14 MS. OVIEDO: And I'm sorry, you had to leave at 3 to catch
15 a flight.

16 JUDGE WEDEKIND: So we're going to continue Monday at 9?

17 MR. DAWSON: That's -- yeah.

18 JUDGE WEDEKIND: And are you going to continue to call
19 management witnesses on Monday?

20 MS. DEMIROK: At this time, no, we'll be calling a GC
21 witness --

22 JUDGE WEDEKIND: Okay.

23 MS. DEMIROK: -- on Monday morning.

24 JUDGE WEDEKIND: Okay. And you're prepared to go.

25 MS. DEMIROK: We are.

1 JUDGE WEDEKIND: Okay. Anything else you want to discuss
2 procedurally?

3 MR. DAWSON: No, Your Honor.

4 JUDGE WEDEKIND: Okay. Off the record. Okay. Have a
5 good weekend.

6 MR. DAWSON: Thank you, Your Honor.

7 **(Whereupon, the hearing in the above-entitled matter was**
8 **recessed at 2:53 p.m. until Monday, September 14, 2015 at 9:00**
9 **a.m.)**

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 28, Case Number

4

28-CA-150157, Shamrock Foods Company and Bakery, Confectionary,

5

Tobacco Workers' and Grain Millers International Union, Local

6

Union No. 232, AFL-CIO-CLC and at the National Labor Relations

7

Board, Region 28, 2600 North Central Avenue, Suite 1400,

8

Phoenix, Arizona 85004, on Friday, September 11, 2015, at 9:03

9

a.m. was held according to the record, and that this is the

10

original, complete, and true and accurate transcript that has

11

been compared to the reporting or recording, accomplished at

12

the hearing, that the exhibit files have been checked for

13

completeness and no exhibits received in evidence or in the

14

rejected exhibit files are missing.

15

16

A handwritten signature in black ink that reads "Deborah Gonzalez". The signature is written in a cursive, flowing style. The first name "Deborah" is written above the last name "Gonzalez". The signature is positioned above a horizontal line.

17

18

DEBORAH GONZALEZ

19

Official Reporter

20

21

22

23

24

25

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 14, 2015

Pages: 479 through 702

Volume: 5

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

SHAMROCK FOODS COMPANY,

and

BAKERY, CONFECTIONERY,
TOBACCO WORKERS' AND GRAIN
MILLERS INTERNATIONAL UNION,
LOCAL UNION NO. 232, AFL-CIO-
CLC

Case No. 28-CA-150157

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004, on **Monday, September 14, 2015, at 9:01 a.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****SARA DEMIROK, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Tel. 602-640-2126
Fax. 602-640-2178

ELISE F. OVIEDO

NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, NV 89101
Tel. 702-388-6211
Fax. 702-388-6248

On behalf of the Respondent:**TODD A. DAWSON, ESQ.**

BAKER & HOSTELLER, LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Tel. 216-861-7652
Fax. 216-696-0740

NANCY INESTA, ESQ.

BAKER & HOSTELLER, LLP
116011 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025-0509
Tel. 310-442-8833
Fax. 310-820-8859

On Behalf of the Union:**ALAN G. CROWLEY, ESQ.****DAVID A. ROSENFELD, ESQ.**

WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Steven Lee Phipps	484	570	631	637	
Thomas Wallace	647	667	696	697	

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-7 (a) and 7 (b)	528	528
GC-8 (a) and 8 (b)	511	511
GC-9 (a) and 9 (b)	534	534
GC-11 (a) and 11 (b)	541	541
GC-12 (a) and 12 (b)	551	551
GC-15 (a) and 15 (b)	517	517
GC-24	567	567
GC-25	637	637
GC-26	664	664
Respondent:		
R-1	577	645
R-2	622	645
R-3	622	645
R-4	624	645
R-5	670	670

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: All right. This is the fifth day of
3 hearing in Shamrock Foods Company. General Counsel, are you
4 ready to call your next witness?

5 MS. DEMIROK: Your Honor, General Counsel for the General
6 Counsel will call Steven Phipps.

7 JUDGE WEDEKIND: Is Mr. Phipps in the room?

8 MS. DEMIROK: I'll have to go get him.

9 JUDGE WEDEKIND: Okay. Sir, are you a witness in this
10 proceeding?

11 UNIDENTIFIED SPEAKER: I am not a witness. I'm a
12 spectator.

13 JUDGE WEDEKIND: Let's go off the record.

14 (Off the record at 9:02 a.m.)

15 JUDGE WEDEKIND: Back on the record. You can have a seat.
16 Thank you. Mr. Phipps --

17 THE WITNESS: Yes, sir.

18 JUDGE WEDEKIND: -- good morning. Can you raise your
19 right hand for me?

20 Whereupon,

21 STEVEN LEE PHIPPS

22 having been duly sworn, was called as a witness herein and was
23 examined and testified as follows:

24 JUDGE WEDEKIND: Okay. Could you state your full name and
25 spell it for us?

1 THE WITNESS: Stephen Lee Phipps.

2 JUDGE WEDEKIND: And how -- go ahead.

3 THE WITNESS: Steven S-T-E-V-E-N, Lee L-E-E, Phipps P-H-I-
4 P-P-S.

5 JUDGE WEDEKIND: Thank you. Counsel.

6 MS. DEMIROK: Okay.

7 **DIRECT EXAMINATION**

8 Q BY MS. DEMIROK: Good morning, Mr. Phipps.

9 A Good morning.

10 Q Are you currently employed?

11 A I am.

12 Q And where are you employed?

13 A I am employed at Shamrock Foods in Phoenix.

14 Q And when were you hired?

15 A September of '96.

16 Q And between the time, you were hired in 1996 until today,
17 have you ever quit?

18 A No.

19 Q And in that time, were you ever fired?

20 A No.

21 Q In what position do you work?

22 A I'm general warehouse. I currently operate a forklift for
23 the company.

24 Q And could you briefly describe for us your duties in that
25 position?

1 A My duties in that position are to take merchandise as it
2 comes in on palettes, put it into overstock slots, and then to
3 take the merchandise from those overstock slots and put it into
4 pick slots for the pickers, and then do whatever else I'm
5 directed to do either by a captain or supervisor/manager.

6 Q And who is your immediate supervisor?

7 A It would be Johnnie Manda or Richard Gomez, depending on
8 the day.

9 Q Now, you mentioned that you take direction from a captain.
10 Can you explain to us what a captain is?

11 A A captain is our first line. They're the ones who
12 expedite; they're the ones who make things run smoothly on the
13 floor. If a case needs to be picked that a picker missed, they
14 run and get it. If they need palettes or bulk run to areas,
15 they make the directions for that. If they need material
16 brought to a specific place, they make direction for that also
17 over the radios.

18 Q And who are the captains that you work with?

19 A I work with Zack White, Art Manning, Pete Herrera, there's
20 Trevor Holt, Steve Garcia. There is Jake Minor.

21 Q Now, in describing what the duties of floor captains are,
22 of those duties, are there any of those that they can -- that
23 they do without seeking permission from a supervisor?

24 MR. DAWSON: Objection.

25 THE WITNESS: Almost all of it.

1 MR. DAWSON: Objection.

2 JUDGE WEDEKIND: If there's an objection, don't answer the
3 question.

4 THE WITNESS: I'm sorry.

5 JUDGE WEDEKIND: What's the basis of the objection?

6 MR. DAWSON: Personal knowledge. They wouldn't -- I mean
7 he wouldn't necessarily be privy to -- okay. I'm sorry.

8 JUDGE WEDEKIND: I got it. Any response?

9 MS. DEMIROK: Well, he's testified that he's worked there
10 for nearly 20 years. He works with those floor captains. And
11 so, if he has any -- maybe I can rephrase the question to if
12 you know.

13 JUDGE WEDEKIND: Sure.

14 Q BY MS. DEMIROK: Of those duties that you described that
15 floor captains have, do you know if they seek -- have to seek
16 permission from another level of a supervisor before giving you
17 such direction?

18 A In most cases, no.

19 Q And can you give us some examples of direction that you're
20 given from a floor captain that you know haven't -- that they
21 don't have to seek permission from a supervisor?

22 A Yes, I can.

23 MR. DAWSON: Objection. I guess maybe I didn't understand
24 the response, but I thought counsel asked do you know if they
25 need authorization, and I though the witness testified in most

1 cases no. I understood that as no, he doesn't know whether
2 they seek permission. Is that --

3 JUDGE WEDEKIND: Yeah, I thought he meant that they don't
4 have to seek permission. Is that what you meant?

5 THE WITNESS: That's correct.

6 JUDGE WEDEKIND: Okay. And at some point, I'm going to
7 want to know how he knows that.

8 MS. DEMIROK: Okay.

9 JUDGE WEDEKIND: Okay. But go ahead.

10 MS. DEMIROK: So let me see if I can ask you that question
11 again.

12 Q BY MS. DEMIROK: Of the duties that you say floor captains
13 don't have to seek permission, could you give us some examples
14 of what those -- what direction would be?

15 A Sure. As I mentioned, their job is to expedite, their job
16 is to make things run smoothly on the floor. Last Wednesday
17 when I was working the floor captain from the March 7 pick
18 location directed me to grab three palettes that had just come
19 in on the inventory and put those up into pick slots.

20 Now, that is expediting the flow of picking merchandise
21 that goes onto our automated system, but he asked me to do
22 something that I wouldn't normally do. Normally, those would
23 go into overstock, and then it would be directed from overstock
24 to the pick slot.

25 I've also been directed by captains to get wrap out of

1 aisle 49 and take it clear across the warehouse to the loading
2 docks where it was needed. I've been directed by captains to
3 grab pick labels, bring those out of 49 and take those either
4 to the office, or the cross dock, or the -- well, it would just
5 be the office, those two locations. But those are things that
6 are not normally in my job description, but captains do that so
7 that we can expedite it.

8 I've been asked to take palettes out of the back of a pick
9 location. We have a -- if I can clarify just a little bit, we
10 have a roll down system where you can put a palette in the
11 back, and it slides forward. You put another palette in the
12 back, and it makes for continuous picking.

13 Well, sometimes a picker may be get a label set for 100
14 cases. The captain and the picker will set-up the back
15 palette, so it has 100 cases and the picker doesn't have to
16 throw it up, but they'll ask myself or another fork lifter to
17 grab that and put it on a cart over by the cross dock. Again,
18 expediting flow.

19 Q And when you say expedite, what do you mean by that?

20 A Speed things up, make things go as smoothly and as fast as
21 possible. The idea is to move as many cases as we possibly can
22 in the shortest period of time.

23 Q And you gave us some examples of when floor captains have
24 given you direction without seeking permission from a
25 supervisor. How do you know what they didn't have to seek

1 permission from a supervisor at those times?

2 A Those are in their purview of what they do. I applied for
3 a floor captain at one time and was given direction that those
4 would be things that would be expected. In the 19 years that
5 I've worked there, captains are allowed to make those
6 decisions.

7 If they make a decision, they pull somebody from, say me
8 off of a lift and throw me in the back of a truck and have me
9 load like I used to, they would be responsible for any
10 interruption in flow or anything that doesn't work out just
11 right.

12 MR. DAWSON: Your Honor, if I may restate my objection,
13 only on the basis of -- in regard to the particular events that
14 Mr. Phipps described. Based on his testimony, at least, thus
15 far, it doesn't seem that he would have personal knowledge as
16 to whether or not the supervisor said they would have someone
17 move those three palettes or, hey -- you know, telling the
18 captain you need to get somebody to do X, Y, or Z.

19 Obviously, his testimony concerning the application is
20 within his knowledge, but in terms of those particular events,
21 we would still object on the basis of personal knowledge.

22 JUDGE WEDEKIND: Are you going to ask any more questions
23 or do you have any response?

24 Q BY MS. DEMIROK: In those examples that you gave, did you
25 ever see the floor captain seek permission before telling you

1 those things?

2 A No, the floor captain does not seek permission before
3 telling me those things, nor do I hear it on the radio.

4 Q And that would be my next question. How do they
5 communicate with supervisors?

6 A Generally, on the radio or face-to-face I'll see one
7 supervisor to every four or five captains.

8 Q And when you say a radio, what kind of radio, what kind of
9 radio is that?

10 A I believe they're Motorola radios, usually three or four
11 channel.

12 Q And do you see them seek permission for other things?

13 A I have, yes.

14 JUDGE WEDEKIND: Well, I'm not going to strike it, so you
15 can argue --

16 MR. DAWSON: I understand.

17 JUDGE WEDEKIND: -- you could argue the weight in your
18 briefs.

19 MR. DAWSON: That goes to weight. Yeah, yeah.

20 JUDGE WEDEKIND: Sure.

21 Q BY MS. DEMIROK: Now, do you know what floor captains are
22 held responsible for?

23 A Floor captains are held responsible for running their
24 areas, whether that's the high rise, the loading dock, cross
25 dock, or mod section.

1 Q And in particular, do you know what Art Manning his held
2 responsible for?

3 A Art Manning is a dock captain. He's on the loading dock.

4 Q And so what would he be responsible for?

5 A He's responsible for making sure that the belts run clear,
6 clearing any jams, making sure that cases are put on the truck,
7 making sure case counts are always there.

8 I often hear him on the radio asking for checks to see
9 what still needs to be loaded on the truck. I hear him on the
10 radio calling out that a truck is done or asking, for example,
11 that JIT be picked up, so he can get it on the truck, and so
12 the truck can be closed. Ask, for cases out of particular
13 areas. All of this is just normal common everyday stuff that
14 we do.

15 Q

16 And what about Zack White? Do you know what he's held
17 responsible for?

18 A Zack white has the same position as Art does. Zack White
19 does -- when he's on the dock, he does the same things that I
20 just described for Art. They'll also jump in a truck and help
21 with loads. They will also reassign loaders if they need to.

22 Now, Zack White also does paper. He sits in an office.
23 Pete Herrera also does this, but they will sit in the office,
24 and they will get routes on the computers from transportation.
25 They will assign those routes to doors. They will assign those

1 routes to loaders, and then they will prepare what they call
2 the JOA paperwork for the loader, so the loader can come in and
3 pick it up and know what he's supposed to be loading, when, and
4 where.

5 Q And do you know how they go about making those
6 assignments?

7 A The assignments, I -- is at their discretion. They may
8 have a system for doing it. I am not privy to that. I'm not
9 privy to any particular thing that they do to make those
10 assignments, other than this loader's here, and this truck
11 needs to be loaded.

12 Q We were talking about what they were held responsible for.
13 What do you mean by being held responsible?

14 A They manage the floors, they manage the docks, they manage
15 the high rises. For example, in the high rise location if
16 something gets behind, you have a particular floor or belt
17 that's behind, I will hear a supervisor get on the radio, or a
18 manager will get on the radio and ask them why that's behind or
19 to make sure that that gets caught up. And then that's their
20 responsibility to do it. If something misses the truck they're
21 responsible for that. They have to make sure that everything
22 gets on that truck, and that truck leaves on time. That's our
23 primary goal every day.

24 Q Do you know if floor captains have any authority to
25 discipline?

1 A Floor captains do not have the authority to discipline.
2 They do have the authority to recommend.

3 A And do you know of any times when a floor captain has
4 recommended discipline?

5 A Yeah, I've been called in the office in my career by a
6 floor captain. We've had a talk with the supervisor. He has
7 recommended that I be disciplined, but it's the supervisor that
8 has the ultimate say so in that.

9 Q And to your knowledge are floor captains like foremans?

10 A You could --

11 MR. DAWSON: Objection.

12 MS. DEMIROK: To his knowledge. I mean if he --

13 JUDGE WEDEKIND: Well, what --

14 MR. DAWSON: What is a foreman.

15 JUDGE WEDEKIND: -- like what foreman? Whose foreman? I
16 mean are all foremans the same, I don't know.

17 MS. DEMIROK: I'll strike that question.

18 Q BY MS. DEMIROK: Now, starting with your supervisor -- I
19 believe you said that's Johnnie Manda or Richard Gomez -- could
20 you describe for us the chain of command of the company?

21 A It would be Johnnie Manda, Richard Gomez, Brian Nicklen,
22 we call him Ernie. He reports to Ivan Vaivao, Ivan Vaivao
23 reports to Jerry Kropman, Jerry Kropman reports to Mark
24 Engdahl, and Mark Engdahl reports to Kent McClelland, as I
25 understand.

1 Q What other positions do employees work in the warehouse?

2 A As I mentioned we have people who load trucks, we have
3 people who work in the hospital area, we have pickers, high
4 rise, mods, floor pickers, cross dot pickers. We have runners
5 that run palettes, we have hard runners that run cases out to
6 the yards. That's in the production area.

7 We have sanitation people, we have returns people.

8 There's also meat plant people, but those really aren't in our
9 section, just like transportation are not.

10 Q Now, Mr. Phipps, I want to draw your attention to November
11 2014. What, if anything, happened in this month related to the
12 Union?

13 A I was talking to my next door neighbor, basically
14 complaining about what was going on at work, the fact that
15 another employee had tried to work with the Teamsters to get
16 the Teamsters in. We chatted for a little bit. He said I
17 needed to talk to his father-in-law, who was a business manager
18 or retired business manager for the BCTGM, that would be the
19 Bakers, Confectionary, Tobacco, and Grain Millers Union.

20 Q Can you tell us a little bit more about the reasons why
21 you decided to contact the Union?

22 A Yeah, several things were going on in the warehouse. We,
23 as a group, felt like managers were not listening to us,
24 listening to our concerns about the job, how the job was being
25 done, wages were going down, benefits were being cut. They had

1 already grandfathered our pension fund. They had given us a
2 catastrophic type insurance program. We just felt like we were
3 out of the loop as far as things go. There were safety issues
4 on the floor that are not being addressed. The work
5 environment was generally for the people on the floor going
6 downhill. That was our opinion.

7 Q And you mentioned your neighbor gave you a name of someone
8 to contact with the BCTGM. Did you contact that person?

9 A Yeah, his father-in-law Dennis came in. He told me he
10 would be in, in a couple of weeks, and we arranged to get
11 together on a Saturday morning, have coffee, and we talked in
12 my neighbor's house. He put me in contact with John Price for
13 the BCTGM. We chatted for five minutes over the phone, and he
14 said he would have Eric Anderson contact me, and Eric called me
15 the following Monday.

16 Q And who is -- Eric Anderson, does he work for the Union?

17 A He's currently retired, but at the time he was the -- one
18 of the Union organizing reps.

19 Q And at some point did you meet with the Union?

20 A Yes, I did.

21 Q And where did you meet?

22 A We met down at the Union Hall, which is on 16th Street,
23 just north of Thomas.

24 Q And what, if anything, did you decide going forward?

25 A I decided that the BCDGM would be a good fit for us,

1 because of the way they do things democratically. I decided
2 that it was an organization that we could work with. I liked
3 the people that were there. I had met Mike Wizner, the
4 business manager. I had met Robert Kingsby, the President of
5 the local, and I had met Eric Anderson. All were good people.
6 My wife liked them. We went down there together.

7 And Eric had a plan for organizing the warehouse, which I
8 had not seen or heard about from the Teamsters. I should say
9 from the gentleman that was trying to get us to organize with
10 them.

11 Q And you said they had a plan. What was that plan?

12 A It was to be covert. To start off with only talk to the
13 people you trust, and as Eric said the people you would trust
14 to watch your children. Stay off the campus, not talk about it
15 in the aisles or while we were working, not bring anything onto
16 the property at all at Shamrock, either in the parking lot or
17 in the warehouse. And to keep everything covert, mostly 101
18 meetings to start with.

19 Q Prior to this, had you ever been involved in the Union
20 campaign?

21 A No, I had not.

22 Q And prior to this, do you know if any of Shamrocks Phoenix
23 employees were involved in the Union campaign?

24 A Yes, in 1998.

25 Q Were you working at Shamrock at that time?

1 A Yes, I was.

2 Q And did that campaign result in a presentation?

3 A No, it did not.

4 Q Do you remember anything else about that campaign?

5 A I remember it was very heated. I had made a couple of
6 jokes about Union organization on the floor, just joking around
7 with guys. I was told to shut up, be quiet, don't talk about
8 that here.

9 Q I'm going to draw your attention to December 2014. What,
10 if any, organizing did you participate in during that month?

11 A Eric Anderson and I put a plan together for him to fly in
12 on the weekend. My job was to contact people that I trusted
13 and have them with Eric one on one. And that was the plan we
14 put into place through our December and part of January.

15 Q And what was the purpose of these one on one meetings?

16 A It was threefold. One, we were trying to get people
17 interested in signing cards for Union representation; two, we
18 were looking for committee members; and, three, by doing one on
19 one meetings I was the only one that was exposed. The other
20 people would not see each other. There would be no exposure if
21 somebody wanted to rat us out.

22 Q Did any of the employees you met with sign authorization
23 cards?

24 A Almost all of them.

25 Q And did any of the employees you met with begin to help

1 you organize?

2 A Yes, they did.

3 Q Now, I want to draw your attention to January 2015. What,
4 if any, organizing did you participate in that month?

5 A Again, we were still doing one on one meetings. We were
6 starting toward the end of January to branch into a few group
7 meetings, small group meetings, but, again, it was still people
8 that we trusted. It was still people that we knew. We were
9 still in what I would call the first circle.

10 Q And what was the strategy at that point in time?

11 A Again, the strategy was covert. Stay off campus with any
12 organizing, ask people quietly, don't talk to people about what
13 we were doing unless you trusted them, and do it off-site. No
14 cards on-site, no flyers on-site.

15 Q How would you describe the momentum of the campaign at
16 that time?

17 A Very good. It was extremely good. We had a lot of
18 interest, a lot of people started coming to the little group
19 meetings we were having. Everybody was enthusiastic.
20 Everybody wanted to -- that we talked to wanted representation.

21 Q Now, I want to draw your attention to January 25th, 2015.
22 Did you report to work that day?

23 A Yes, I did.

24 Q And could you tell us what happened that day starting with
25 when you got to work?

1 A I clocked in at the -- what they call the Virginia
2 checkpoint, which is where the time clock is. Zack White, the
3 floor captain, also clocked in at the same time. We both
4 walked down aisle 75 to go to the respective areas we were
5 headed to.

6 Zack asked me if I had heard anything about the organizing
7 that was going on in California. He asked me if I knew
8 anything about any organizing inside the Phoenix warehouse. I
9 asked him what he knew, as I didn't want to have the Teamsters
10 in our Phoenix location. He said that he had heard rumors that
11 whoever was organizing was really close to getting the Union
12 into the warehouse.

13 Q And who does Zack White report to?

14 A Zack White generally reports to Jake Myers, who is known
15 to be very anti-union. We knew at that point that Jake was
16 hunting for us.

17 Q And were -- when you had this conversation with Zack White
18 were there any other employees nearby?

19 A No, none.

20 Q And where were you when you had this conversation?

21 A Aisle 75 in the dry.

22 Q Have you ever had a conversation like this with him
23 before?

24 A Never.

25 Q Now, I want to draw your attention to three days later,

1 January 28th. Did you report to work that day?

2 A Yes, I did.

3 Q And when did you report to work?

4 A Approximately 8:00 in the morning, as I remember.

5 Q Did you attend any meetings that day?

6 A Yes, I did.

7 Q And where was that meeting?

8 A That meeting was held in auditoriums 1, 2, and 3.

9 Q Who conducted that meeting?

10 A Mark Engdahl.

11 Q And who attended that meeting?

12 A Everybody in the warehouse.

13 Q Would that include managers and supervisors?

14 A That included everybody. They shut everything down, all
15 production, sanitation, will call, returns, office people,
16 maintenance. Everybody including managers and supervisors were
17 there, yes.

18 Q When did you first learn about that meeting?

19 A I think that meeting was posted about a week before. It
20 was posted as a Town Hall meeting.

21 Q And when you say posted, what do you mean by that?

22 A They put up a -- they have areas where they put up flyers
23 to get the word out that something's going on. They'll often
24 times put a little poster, eight-and-a-half by 11 sheet that
25 they run off on a computer, up by the time clock. There's also

1 a couple of them at entryways to breakrooms, that kind of
2 thing.

3 Q Now, I'd like you to tell us what happened during this
4 meeting, starting at the beginning.

5 A Mark called the meeting to order. He told us that he was
6 going to be discussing the Teamster push in California. The
7 Union push. He said it was relevant to our location. He went
8 into a series of summaries on the Teamsters, the dues -- annual
9 dues, how much the secretary/treasurer of the Teamster's make.
10 He talked a little bit about his experience in the Teamsters.

11 He showed a video that was anti-union. It showed an
12 organizing campaign in progress, showed the committee members
13 at a restaurant. They were trying to figure out what to do.
14 The Union rep comes in. He tells them hey you guys got to
15 push. And the next thing we see on the video is some of the
16 organizers using what I would call underhanded tricks to get
17 done what they want to get done.

18 An example of that would be an organizer went to somebody
19 who was talking about how much overtime they had to have and
20 how they needed it to -- I believe it was to help the
21 grandmother or the mother. And the organizer told him if
22 you'll sign the cardboard, we'll make sure you get all the
23 overtime you need.

24 The next clip shows the same organizer going to somebody
25 who doesn't want the overtime, it's cutting into their family

1 life. And the organizer tells them, hey, sign the card, we'll
2 got rid of the overtime for you.

3 After the video Mark summarized what was going on in
4 California, how they -- the Teamsters were trying to make a
5 push, I believe, and then he summarized his meeting. Then he
6 opened it up for questions after that.

7 Q Now, other than the video, did he use anything in the
8 presentations?

9 A He used overheads. I believe they were PowerPoint. There
10 was an assistant -- I don't know if it was his secretary that
11 was at a computer on the left hand side front that was -- she
12 was running through something on a computer and Mark would
13 direct her to change the slide every now and then.

14 MS. DEMIROK: Now, I would just like to point out that we
15 didn't receive any slides related to this meeting. We also
16 didn't receive the video, which was requested in the subpoena.

17 JUDGE WEDEKIND: And remind me the date of this meeting
18 again?

19 MS. DEMIROK: January 28th, 2013. In addition, we didn't
20 receive any notices of this meeting, which he has testified
21 that were posted in the warehouse.

22 Q BY MS. DEMIROK: Now, Mr. Phipps, you said that he opened
23 it up for questions at the end of his presentation. Did any
24 employees ask any a questions?

25 A Yes, Thomas Wallace asked a question or two.

1 Q And do you recall what he asked?

2 A Yes, he asked if one warehouse were organized, would all
3 the warehouses in Shamrock be in Shamrock. He asked if all he
4 warehouses were organized would -- or one was organized, would
5 all the warehouses be organized. Mark told him, no,
6 fortunately only the one would be organized.

7 Q Did he ask any other questions?

8 A He also asked -- Thomas Wallace also asked why our
9 competitors were organized.

10 Q And did Mr. Engdahl respond to that?

11 A Yes, he did. He responded that he felt that something had
12 happened in the past that made the employees unhappy and that
13 that was the reason that they voted the Unions in. He -- in
14 his opinion, he said Cisco and U.S. Foods -- excuse me -- they
15 used the Unions to keep wages down. He had also talked about
16 that a little bit when he talked about bargaining.

17 Q Now, did you record this meeting?

18 A Yes, I did.

19 Q And why did you do that?

20 A My wife had told me to. She said if you're going to go
21 into an organization you need to start recording and
22 documenting your conversations with managers.

23 Q Now, after this Town Hall meeting on January 28th, did
24 anything happen after that?

25 A Yes, I went from there t o a roundtable meeting with

1 Natalie Wright, the HR Manager.

2 Q And was anyone else present during that meeting?

3 A There were about ten other employees that were in
4 attendance at that meeting. Natalie Wright was there. She had
5 an assistant taking notes.

6 MS. DEMIROK: And I'd like to point out for the record
7 that we didn't receive any notes in response to the subpoena.

8 JUDGE WEDEKIND: Do you know who the assistant was?

9 THE WITNESS: I do not know the assistant's name. I know
10 her by sight. I do know that she works in the HR Department.

11 Q BY MS. DEMIROK: So I'd like you to tell us what happened
12 at this meeting on the 28th.

13 A We sat down in the meeting. There were people there from
14 all the jobs, loaders, pickers, receivers, forklifters,
15 throwers were all there. Natalie called the meeting to order.
16 She said the purpose of the meeting was to discuss problems and
17 issues that we were having inside the warehouse. She wanted to
18 see what she could do to get those problems resolved.

19 We understood or I understood, I should say, that the
20 purpose of the meeting was to get the issues out and to talk
21 about any problems that we had.

22 Q And what, if any, issues were brought up?

23 A The concerns were about job -- the way jobs were going,
24 the way management was not listening to us, concerns about
25 equipment. For example, one of the loaders said they still

1 needed six or seven palette jacks. One of the inbound
2 forklifters at the time was talking about how some of the
3 equipment was older dated, it took a long time to get it
4 repaired.

5 One of the receivers as talking about the new business
6 process that they were getting ready to implement for the
7 receivers and how he didn't feel that his concerns for that
8 process were being listened to.

9 Q And did you record this meeting?

10 A Yes, I did.

11 Q Now, you said you recorded both of these meetings. What
12 did you record that with?

13 A I recorded them with a Sony digital recorder.

14 Q And what did you do with the recording after you took it?

15 A After I took it, I went home, and I downloaded the
16 recording to my computer, and eventually copied that recording
17 onto CDs and gave it to the Board Agent.

18 Q Now, I'd like to play something for you, Mr. Phipps, and
19 then ask you a few questions about it.

20 A Okay.

21 Q And I'm playing for you what's been marked as GC Exhibit
22 8(b).

23 (Audio recording played at 9:41 a.m.)

24 Q BY MS. DEMIROK: Now, Mr. Phipps, do you recognize which
25 recording this is?

1 A It sounds like the one from -- that I started right before
2 Mark Engdahl's meeting, but you would have to actually go into
3 the meeting for me to positively identify it. I recognize my
4 voice.

5 Q Okay.

6 (Audio recording played at 9:42 a.m.)

7 MS. DEMIROK: Let the record reflect we -- I'm at about
8 seven minutes and 50 seconds, and I'm going to keep playing it
9 until we hear the beginning of the meeting.

10 THE WITNESS: We were talking about a movie right there.

11 (Audio recording played at 9:42 a.m.)

12 JUDGE WEDEKIND: I think the witness recognizes it. We --
13 okay.

14 Q BY MS. DEMIROK: Is this an accurate representation of the
15 beginning of this meeting?

16 A Yes, it is.

17 Q An accurate representation of the recording that you took?

18 A Yes, it is.

19 Q And did you recognize the voice that was speaking on
20 there?

21 A Yes, that was Mark Engdahl.

22 Q Now I'm going to move to the end of this recording. Mr.
23 Phipps, for the record, did you stop recording after this
24 meeting?

25 A No, I did not.

1 Q And from the time you started recording, when did you stop
2 recording?

3 A It was approximately two hours and some odd minutes, two
4 hours ten, two hours 20 minutes. I'm not exact on the length.

5 Q And but after what event did you stop recording?

6 A After the roundtable meeting with Natalie Wright.

7 Q So you recorded straight from the beginning of the first
8 meeting through to the second?

9 A Yes, ma'am, I did.

10 Q And when you downloaded the recording on your computer,
11 how did you transfer those onto the CDs?

12 A First I tried to transfer all two hours onto the CD and
13 found out they wouldn't fit. So I had to break the recording
14 in the point where I walked from the town hall meeting with
15 Mark Engdahl to the Cholla Room roundtable meeting with Natalie
16 Wright. There was about maybe five, three, four, five minutes
17 in there and I broke it in that walk period.

18 Q And do you have any reason to believe that when you
19 transferred the recording onto the two separate disks, that
20 anything was missing?

21 A No, the reason I don't believe that because the way the
22 software works, it gives me a bar at the top. I pick the point
23 to break and let's say I break it at 65 minutes, the next
24 recording will pick up at 65 minutes and one second.

25 Q Okay.

1 A And then continue from there.

2 (Audio recording played)

3 Q BY MS. DEMIROK: Do you recognize that voice?

4 A That's Jerry Kropman.

5 Q And I'm at one minute for 1 hour 6 minutes and 56 seconds
6 and I think I need to go a little bit more forward to hear the
7 end. I'm at 1 hour 9 minutes and 10 seconds and I'm just going
8 to go forward a little bit more so we can --

9 (Audio playback continues)

10 Q BY MS. DEMIROK: Now we stopped at 1 hour 14 minutes and
11 27 seconds. Is that an accurate representation of the end of
12 the meeting?

13 A Yes, it was.

14 Q And is that an accurate representation of what you
15 recorded?

16 A Yes, it is.

17 Q And this recording goes on for another 13 seconds. I'll
18 just play that so that we can make sure that what continues to
19 record is what you did.

20 (Audio recording played)

21 Q BY MS. DEMIROK: Now Mr. Phipps, was that an accurate
22 representation of where you stopped this recording and put that
23 onto the CD that you gave to the Board agent?

24 A Yes, it is.

25 MS. DEMIROK: Your Honor, at this time, I'd like to move

1 to admit what's been marked as GC Exhibit (a) and GC Exhibit
2 (b). Or I'm sorry, 8(a) and 8(b).

3 JUDGE WEDEKIND: Okay. Any objection to this --

4 MR. DAWSON: Yes, Your Honor. We would object on the
5 basis that, you know, the witness obviously has testified that
6 he was using software and how the software worked, you know, to
7 -- I don't think there's been any testimony that he actually
8 listened to the entire recording to ensure that nothing had
9 been lost. In addition, there's a chain of custody up until
10 it's turned over to the Board agent, but I don't believe he's
11 listened to this particular recording to confirm that it's
12 accurate and complete in its entirety.

13 JUDGE WEDEKIND: Any response?

14 MS. DEMIROK: Well, he did testify that he knew how long
15 the recording was in total. And I would point out that this
16 recording is, you know, 1 hour and 14 minutes long and I could
17 follow up and ask him a few more questions on that if
18 necessary.

19 JUDGE WEDEKIND: Why don't you follow up?

20 Q BY MS. DEMIROK: Mr. Phipps, do you know at what point you
21 stopped the first recording and you started the next? Do you
22 know what the time was?

23 A It was about an hour and 15 minutes or so. But I did
24 listen -- sorry.

25 Q And my next question would be did you ever listen to the

1 recording in its entirety?

2 A Yes, I did.

3 Q And do you have any reason to believe that the Board agent
4 that you gave this recording to did any editing to the
5 recording?

6 A I do not believe she did, no.

7 JUDGE WEDEKIND: Did you do any editing? Other than --

8 THE WITNESS: No, sir, I did not.

9 JUDGE WEDEKIND: Okay. So what's your proposal, Mr.
10 Dawson?

11 MR. DAWSON: You want us to play the entire tape here in
12 the hearing room -- each one?

13 MR. DAWSON: I don't think that that's necessary, Your
14 Honor, but if we could -- if perhaps the witness and by the
15 way, I don't have any reason to suspect that either in terms of
16 the Board agent doctoring the recording. But just for the sake
17 of the record, if perhaps even with briefing, the witness could
18 submit a declaration that he has in fact listened to all of the
19 tapes or all of the recordings that were submitted at the
20 hearing and confirm that they're true, accurate and complete
21 copies. So that we don't have to delay these proceedings, but
22 we do have, you know, some evidence in the record even by
23 declaration because I'm not sure there'd be much to cross-
24 examine on.

25 By declaration, that he's listened to the tapes and

1 they're all complete, accurate, true copies.

2 JUDGE WEDEKIND: Yeah, I'm not inclined to do that either.
3 I think -- I might be inclined to do that if you present any
4 significant testimony evidence that there's something missing.

5 MR. DAWSON: And Your Honor, we don't -- just to be clear,
6 we don't have that evidence right now, so.

7 JUDGE WEDEKIND: All right. So I think I'm going to
8 overrule your objection. Do you have any other objection?

9 MR. DAWSON: No, Your Honor.

10 JUDGE WEDEKIND: Okay. So you're withdrawing your earlier
11 objection to all the audiotapes?

12 MR. DAWSON: Yes. Yes, Your Honor.

13 JUDGE WEDEKIND: Okay. Thank you. Okay. So 8(a) and (b)
14 are --

15 MS. DEMIROK: 8(a) and (b)1.

16 JUDGE WEDEKIND: -- received.

17 **(General Counsel Exhibit Number 8(a) and 8(b) Received into**
18 **Evidence)**

19 MS. DEMIROK: Thank you, Your Honor.

20 MR. DAWSON: Your Honor, in terms of 8(a) and we've --
21 counsel has discussed this, there do appear to be some
22 inaccuracies in the transcript. We're hoping that perhaps we
23 can clear those up by stipulation.

24 JUDGE WEDEKIND: That'd be great. Because, you know, to
25 be honest, I don't want to have to listen to them all either.

1 MR. DAWSON: Right.

2 JUDGE WEDEKIND: So it would be -- that would be helpful.

3 And if you can stipulate to who's saying what if it's
4 important; if they're not, well I don't care.

5 MS. DEMIROK: We will work with Respondent's counsel on
6 that.

7 JUDGE WEDEKIND: That'd be great. Okay.

8 MR. DAWSON: May we take a brief five minute --

9 JUDGE WEDEKIND: Okay.

10 MR. DAWSON: -- ten minute recess? Ten minutes? Five
11 minutes is fine. Can we take a five minute recess?

12 JUDGE WEDEKIND: Five, let's take five. Off the record.
13 You can use the restroom if you'd like. Just don't talk to
14 counsel.

15 THE WITNESS: Yes, sir.

16 (Off the record at 9:57 a.m.)

17 MS. DEMIROK: Your Honor, if we could address something
18 really quickly before --

19 JUDGE WEDEKIND: Sure.

20 MS. DEMIROK: -- we continue the questioning. We had
21 issued a subpoena for Vince Daniels and we sent Respondent's
22 counsel a copy yesterday evening. And we were just discussing
23 whether or not they would accept service. It's my
24 understanding that they would accept service. So we were
25 otherwise going to hand serve him today.

1 MR. DAWSON: Yes, Your Honor, that's correct. I'll accept
2 service on behalf of Mr. Daniels.

3 JUDGE WEDEKIND: Okay.

4 MR. DAWSON: And I haven't actually gotten a chance to
5 speak with him yet today, but we'll be producing him tomorrow
6 unless, you know, there's something that I don't know about. I
7 don't believe there's going to be any issue.

8 JUDGE WEDEKIND: Okay. Mr. Engdahl as well?

9 MR. DAWSON: Mr. Engdahl as well. He should be on a plane
10 I would imagine now and landing tonight at 11. So he should
11 also be here tomorrow.

12 JUDGE WEDEKIND: Okay. Thank you.

13 Q BY MS. DEMIROK: Okay, Mr. Phipps, we had just gone
14 through the recording of the town hall meeting and now I want
15 to play for you another recording and ask you some questions
16 about it after.

17 MR. DAWSON: Your Honor, if I may just clarify briefly,
18 I'm not sure that this makes a difference, but just to clarify,
19 the transcripts are only coming in as I understand it as
20 evidence of what was said at the meeting. And not necessarily
21 for the truth of what was said at the meeting. So to the
22 extent that there are events described with other employees in
23 those transcripts, we would still object to those on the basis
24 of hearsay. Not even -- if that's clear. This is just for the
25 fact of what was said. Is that --

1 JUDGE WEDEKIND: Is that what you're offering it for?

2 MS. DEMIROK: We are offering them -- we are offering the
3 transcripts for what was said. But the allegations that
4 pertain to these particular recordings are anyone's statements.
5 And so in that regard, they're not hearsay because there would
6 be admissions against party opponent.

7 JUDGE WEDEKIND: But for example, if someone says in the
8 tape, John crashed his truck yesterday. You're not presenting
9 it as evidence that John crashed his truck.

10 MS. DEMIROK: No, we're not.

11 JUDGE WEDEKIND: Okay.

12 MR. DAWSON: Thank you, Your Honor.

13 (Audio recording played)

14 Q BY MS. DEMIROK: Now Mr. Phipps, I'm playing what's been
15 marked as GC Exhibit 15(b). And do you recognize what the
16 beginning of this was?

17 A No, I do not. I recognize that it's getting ready for a
18 meeting. I recognize my voice on it, but that's about the
19 extent of what I recognize at this point.

20 Q Okay. Now I'm going to go forward.

21 (Audio recording played)

22 Q BY MS. DEMIROK: Now I started the recording at 4 minutes
23 and 50 seconds and do you recognize now what this is a
24 recording of?

25 A Yes, it's a recording of the roundtable meeting with

1 Natalie.

2 Q And from what you've heard so far, is that an accurate
3 representation of the recording that you recorded?

4 A Yes.

5 Q And an accurate representation of the beginning of the
6 meeting?

7 A Yes.

8 (Audio recording played)

9 Q BY MS. DEMIROK: Now, Mr. Phipps, is that an accurate
10 representation of the end of the meeting?

11 A Yes, it is.

12 Q And did you recognize any of those voices?

13 A I recognized Natalie's voice, yes.

14 Q And now we're at 1 hour 11 minutes and 51 seconds when I
15 stopped the recording and the entire recording is 1 hour 16
16 minutes and 58 seconds. I'm going to play -- towards the end
17 of this recording, you can tell me whether or not this is when
18 you stopped the recorder.

19 (Audio recording played)

20 Q BY MS. DEMIROK: Mr. Phipps, is that an accurate
21 representation of the end of this recording?

22 A Yes, it is.

23 Q And have you listened to this entire recording before?

24 A Yes, I have.

25 Q Do you have any reason to believe that since you turned

1 over the recording to the Board agent, that it's been changed
2 in any way?

3 A I do not.

4 Q And did you do any editing to the recording yourself?

5 A Other than what I've described cutting the recording in
6 half, no.

7 MS. DEMIROK: Your Honor, at this time I'd move to admit
8 what's been marked as GC Exhibit 15(a) and 15(b).

9 MR. DAWSON: Other than the prior objection which we
10 understand Your Honor has already overruled, we have no other
11 objections. And if I may, Your Honor, just have a standing
12 objection to that effect so we don't have to continue to raise
13 it.

14 JUDGE WEDEKIND: So you're going to contest the -- what
15 basis are you going to contest these audiotapes?

16 MR. DAWSON: Well, we, you know, we don't have any
17 evidence presently that any of these recordings are anything
18 other than complete. Reviewing the transcripts, it doesn't,
19 you know, appear to be that any of them have items missing.
20 But because of the sequestration order, we haven't been able
21 to, you know, we haven't shown the transcripts to anyone or
22 been able to confirm with anyone that, you know, they have a
23 different recollection of something else coming up.

24 So at this point, again while I don't expect that there
25 has been any editing, we haven't been able to kind of do our

1 due diligence just to confirm that.

2 JUDGE WEDEKIND: Got it. Any response? Any further
3 response?

4 MS. DEMIROK: No further response.

5 JUDGE WEDEKIND: Okay. All right. I'm going to admit
6 them just like I did the other ones. But you can always move
7 for reconsideration of that later.

8 MR. DAWSON: Thank you, Your Honor.

9 JUDGE WEDEKIND: Okay.

10 MR. DAWSON: That's, yeah, thank you, Your Honor.

11 JUDGE WEDEKIND: All right. 15(a) and (b) are received.

12 **(General Counsel Exhibit Number 15(a) and 15(b) Received into**
13 **Evidence)**

14 Q BY MS. DEMIROK: Now, Mr. Phipps, we were talking about
15 January 28th, 2015. And you've already testified about the two
16 meetings that you attended. Did anything else happen on that
17 day?

18 A Yes, it did.

19 Q And what was that?

20 A We had an organizing meeting at Denny's. It's on I-17 and
21 Thomas about a quarter mile from the facility.

22 Q And was anyone there from the Union?

23 A Yes, Mike Wizner was there, the business manager, Eric
24 Anderson was there, the Union rep and I showed up at about
25 5:30.

1 Q Did any other employees attend this meeting?

2 A At about 6:30, we started having employees show up and
3 within about 20 minutes, we had five or six show up.

4 Q And how did these employees know about the meeting?

5 A We had gotten word out to committee members and those that
6 we trusted that had already signed cards, told them where the
7 meeting would be, what time it would be. And if they had
8 anybody who wanted to sign a card or anybody that was
9 positively for the Union, to send them over, we'd get their
10 questions answered and allow them to sign a card if they wanted
11 to.

12 Q And you said you were at Denny's. Could you give us an
13 idea of where you were seated in Denny's?

14 A We were in the back at the very back table. That
15 particular Denny's is laid out in a U shape. As you come in
16 the front door, there's tables directly in front of you. The
17 cashier counter is to your right. Bathroom's directly ahead.
18 To your right is the main dining hall. And if you go across
19 that hallway to the next wall and look to your left, there's a
20 group of tables back there that you can't see from the lobby.

21 Q And approximately how long were you at Denny's?

22 A Personally I was there approximately two hours.

23 Q What happened when you were leaving Denny's?

24 A When I was leaving Denny's, I ran into Art Manning and
25 another employee discussing the Union versus the open door

1 policy for Shamrock.

2 Q How did you first learn that Mr. Manning was at Denny's?

3 A I ran into him.

4 Q Did you expect to see him there?

5 A I did not, no.

6 Q And can you describe for us where Mr. Manning was when you
7 saw him?

8 A He was on the handicapped ramp in front of Denny's leaning
9 against -- with his back leaning against a rail. Another
10 employee was talking to him was a step down on the parking lot.

11 Q And this employee that was talking with him, had he been
12 meeting with the Union prior?

13 A He had just signed a card, yes.

14 Q So what did you do when you left Denny's?

15 A I went over to Circle K.

16 Q And why did you do that?

17 A So Art wouldn't see where I was or see the employee I was
18 to meet over there.

19 Q And why were you meeting an employee at Circle K?

20 A I had gotten a call while I was standing there with Art
21 and the other employee and the employee who called me was one
22 of our organizers. He said that an employee had driven into
23 the parking lot, had seen Art, driven away, wanted to sign a
24 card, could I meet them someplace so they could sign it without
25 Art seeing the other employee.

1 MR. DAWSON: Objection to the extent it's offered to prove
2 the truth of the matter asserted, that the employee saw Art and
3 drove away.

4 JUDGE WEDEKIND: Is it going to be corroborated? Are you
5 offering it for that -- what's your response? The Board allows
6 hearsay testimony if it's corroborated. So it does appear to
7 be hearsay. If you're offering it for that.

8 MS. DEMIROK: But I do expect it to corroborated.

9 JUDGE WEDEKIND: Okay. Do you want it to come in for the
10 truth?

11 MS. DEMIROK: I would like it to come in for the truth of
12 the matter asserted.

13 JUDGE WEDEKIND: Okay. I'll overrule the objection for
14 now on the condition that it's corroborated.

15 MR. DAWSON: Thank you.

16 Q BY MS. DEMIROK: Now, Mr. Phipps, I want to draw your
17 attention to February 2015. In February, what if any Union
18 organizing did you participate in?

19 A We were still doing Union organization with small group
20 meetings. We had decided to move to that route as interest was
21 growing. We were still doing one on ones card signings. We
22 had actually moved our meeting site from the Denny's on Thomas
23 to a Denny's on Bethany Home and 35th Avenue. Had very good
24 turnout, very good response there.

25 Q And what was the organizing strategy at this point?

1 A Again, it was still covert. Again, it was still word of
2 mouth. We had allowed certain committee members to have cards.
3 But they were not to take them into or onto the facility. You
4 know, if they were there, they were supposed to stay in the
5 car, in your glove box, that type of thing. And then you go
6 sign them someplace else with whoever you were talking to or
7 bring them to a meeting.

8 JUDGE WEDEKIND: I just want to interrupt for a second.
9 You know, I raised the question I believe on the first day that
10 we're not going to get into the effect of the alleged unfair
11 labor practices on the Union campaign. We've had some
12 testimony of -- I think it may have been volunteered. But in
13 any event, about how successful they've been, that kind of
14 thing. Kind of opening the door and I'm concerned about that.
15 Are you offering this testimony for any particular reason?

16 MS. DEMIROK: Well, I was only offering it to provide you
17 some context. Some background information as far as what was
18 going on around the same time that some of the allegations were
19 to take place.

20 JUDGE WEDEKIND: Okay. But you're not really asking this
21 witness to testify about how successful the campaign was, are
22 you?

23 MS. DEMIROK: No, I'm not.

24 JUDGE WEDEKIND: Okay.

25 MR. DAWSON: Your Honor, if I may just respond briefly.

1 And we can always address this I suppose when we come to cross.
2 But we do believe that in some respects, in some limited
3 respects, that evidence may be relevant in the sense that the
4 General Counsel is seeking some extraordinary remedies on the
5 basis of the fact that the alleged unfair labor practices were
6 severe and pervasive. And so to some extent, you know, we
7 think that it is going to be relevant at least to the remedy
8 issue.

9 JUDGE WEDEKIND: Yeah, I've heard this before and it
10 actually came from the other sides saying that it was relevant.
11 And I'm not sure it is. Do you think it's relevant? The
12 subjective response of the employees to whether or not I should
13 order the special remedies? Under Board law?

14 MS. DEMIROK: Under Board law, no, I don't believe so.

15 JUDGE WEDEKIND: Yeah, I don't think it is either. And
16 it's just interesting. I had another case where the General
17 Counsel argues that it's relevant.

18 MR. DAWSON: Yeah, we're mercenaries.

19 JUDGE WEDEKIND: Actually I think it was the Charging
20 Party argued that it was relevant and I looked. I couldn't
21 find any Board law to support that.

22 MR. DAWSON: Okay.

23 JUDGE WEDEKIND: So and now we have the General Counsel
24 saying they're not going to rely on it for that. So again, I
25 don't want to open the door because I don't want to litigate

1 something here that we don't need to litigate, that's not
2 relevant to this proceeding.

3 MR. DAWSON: Yes, Your Honor.

4 JUDGE WEDEKIND: So I could just say right now, to the
5 extent that the witness has testified about how successful the
6 campaign was, I'm not going to rely on it for anything. If you
7 want me to, you're going to have to ask me to, okay.

8 MS. DEMIROK: General Counsel has no problem for --=

9 JUDGE WEDEKIND: Okay. Thank you.

10 Q BY MS. DEMIROK: Now, Mr. Phipps, let me draw your
11 attention to February 5th, 2015. Did you report to work that
12 day?

13 A I did.

14 Q And did you have any meetings on that day?

15 A Yes, I did.

16 Q And where was that meeting?

17 A That was in the upstairs training room.

18 Q And who, if any, supervisors were there?

19 A No supervisors -- managers. Ivan Vaivao and Natalie
20 Wright.

21 Q Were there any other employees attending?

22 A There were about ten of us. It was an informational
23 roundtable.

24 Q Now could you tell us what happened at that meeting?

25 A Ivan called us to order. He said that the purpose of the

1 meeting was twofold. One, was to get correct information to
2 the employees. He felt that the information he would give to
3 employees would make its rounds around the warehouse through
4 the grapevine and come back to him and be incorrect. So he
5 wanted the correct information to employees. Even if he had to
6 get department heads to give us that information. And two, he
7 wanted to find out what the issues on the floor were. And see
8 what was going on. And he mentioned that Natalie had a
9 presentation on benefits and wages and that kind of thing to
10 give as well.

11 Q And what, if any, issues were raised by employees during
12 this meeting?

13 A Employees raised issues about again management listening.
14 We -- I did a fair amount of talking in that meeting. I
15 mentioned that I felt and a lot of people felt on the floor
16 that had talked to me that management used us like machinery.
17 They didn't care what we thought or what we did. That they had
18 cut our wages, they had cut our benefits without caring about
19 how that affected our families.

20 Another employee talked about how employees were not
21 talked about about physical changes to work areas. That
22 management didn't care how those changes affected us, affected
23 our work, made it harder for us. Didn't care about talking
24 with us. This particular employee brought up a schedule change
25 that two other employees wanted to do that would have been good

1 for the company, would have been good for the employees because
2 they wanted to. Would have put a more experienced receiver by
3 himself on a Saturday rather than having a less experienced
4 receiver without help on that day.

5 Q Now, I'm going to play for you another recording. I'm
6 going to see if you can identify it. And I'm playing for you
7 what's been marked as GC Exhibit Number 7(b).

8 (Audio recording played)

9 Q BY MS. DEMIROK: Now, Mr. Phipps, is there any way that
10 you can identify the beginning of this -- what this is a
11 recording of?

12 A It's a recording of me putting the recording device in my
13 pocket.

14 Q And how did you -- did you have a typical way of where you
15 would go or what you would do as far as when you would start to
16 record these meetings?

17 A Yes, I did.

18 Q Can you tell us about that?

19 A I would generally try to get someplace like a bathroom
20 where I wouldn't be seen. We wear a safety vest, it has a
21 front pocket and I would turn the recorder on and put it in my
22 front pocket of my safety vest. It seemed to pick up real well
23 there and I could be still and get a good recording.

24 Q Now I'm going to move more towards the beginning of this
25 meeting.

1 (Audio recording played)

2 Q BY MS. DEMIROK: Did you recognize that most recent voice
3 you heard?

4 A Yeah.

5 Q And who was that?

6 A That sounds like it's Frank Sanchez.

7 Q Let me play some more for you and maybe we can break up
8 who's speaking at what time.

9 (Audio recording played)

10 Q BY MS. DEMIROK: Do you recognize that voice?

11 A That's Ivan.

12 Q Okay. And that's Mr. Vaivao?

13 A Yes.

14 Q Now I started this recording at 9 minutes and 48 seconds.
15 Is this an accurate representation of the beginning of the
16 meeting?

17 A Yes.

18 (Audio recording played)

19 Q BY MS. DEMIROK: And, Mr. Phipps, is that an accurate
20 representation of the end of the meeting?

21 A Yes.

22 Q And there was a woman speaking. Did you identify that
23 voice?

24 A Natalie Wright.

25 Q And I stopped the recording at 1 hour 1 minute and

1 52 seconds. And the entire recording is 1 hour 5 minutes and
2 20 seconds. By the way, have you ever listened to this whole
3 recording before?

4 A Yes, I have.

5 Q I'm going to move towards the end of this recording at
6 1 hour 4 minutes 58 seconds.

7 (Audio recording played at 10:31 a.m.)

8 Q BY MS. DEMIROK: Do you recognize what was happening at
9 the end of that recording?

10 A Yes, I do.

11 Q And what was that?

12 A We were in the bathroom.

13 Q And is this an accurate representation of the end of this
14 recording?

15 A Yes, it is.

16 Q And when you stopped recording?

17 A Yes.

18 Q And again, what did you make this recording with?

19 A It was a Sony digital recorder.

20 Q And how did you go about -- what did you do with the
21 recording after you made it?

22 A Again, I transferred it to my computer. From my computer,
23 I transferred it onto CD and gave it to the Board agent.

24 Q Do you have any reason to believe that the Board agent did
25 anything with it as far as editing after you gave it to her?

1 A I do not.

2 MS. DEMIROK: Your Honor, at this time I'd move to admit
3 what's been marked as GC Exhibit 7(a) and 7(b).

4 JUDGE WEDEKIND: Is there an objection?

5 MR. DAWSON: Subject to a potential request to reconsider,
6 no objection, Your Honor.

7 JUDGE WEDEKIND: Okay. Thank you. It's received.

8 **(General Counsel Exhibit Number 7(a) and 7(b) Received into**
9 **Evidence)**

10 Q BY MS. DEMIROK: Now, we just talked about the meeting you
11 attended on February 5th, 2015. Did you attend any other
12 meetings at work during February?

13 A I did.

14 Q And do you know when that was?

15 A February 25th, I believe.

16 Q Who was present during this meeting?

17 A That would have been Ivan Vaivao and Brian Nicklen and
18 about eight other employees.

19 Q And where was this meeting?

20 A This was in the upstairs conference room.

21 Q And who conducted the meeting?

22 A Ivan Vaivao.

23 Q And I'd like you to walk us through this meeting starting
24 at the beginning.

25 A We were directed to be up there at 2:30, walked into the

1 conference room. Ivan called the meeting to order, opened it
2 up, started talking to us, told us the purpose of the meeting
3 was to inform us of our rights and give us facts about the
4 Union. He went on to say that Shamrock had a pretty good idea
5 of who was organizing, and was aware that the meat plant
6 manager had been approached about organizing. He said that
7 they knew that meetings were being taken or meetings were being
8 done off-site out of camera range.

9 He then showed us an anti-union video. It was anti-union
10 towards the Teamsters, talked about Jimmy Hoffa, scandals the
11 Teamsters had had and presidents going to jail, that kind of
12 thing. And then went into, have former Teamster reps talk
13 about places they had organized where it didn't work out so
14 well. Ivan went on to say, after the meeting -- or after the
15 video, excuse me, that he had guys coming up to him asking him
16 to stop Union people from coming and talking to them. Ivan
17 told us that if we wanted to stop Union people from coming and
18 talking to them that we needed to tell them no, hell no, he
19 emphasized that. Said tell the guy, get out of my way. And
20 then he went on to say, raise your hand, tell us this guy is
21 bugging you.

22 Q How are you feeling during this meeting?

23 A I was scared, very scared.

24 Q Why was that?

25 A Ivan said that he knew who the organizers were, that

1 Shamrock knew who the organizers were. At this meeting, I sat
2 across the table from him, and he would not look at me until
3 the very end of the meeting. Ivan and I always had a good
4 working relationship.

5 He also said that the meat plant manager had been
6 approached about organizing. As far as I knew, I was the only
7 one who had ever talked to the meat plant manager about
8 anything related to the Union, and he had approached me.
9 So those two things told me that Ivan knew that I was involved.
10 He also knew that we were having meetings off-site.

11 Q Now, do you know if other employees attended similar
12 meetings?

13 A Yes. They had those meetings with every employee.

14 Q And did you record this meeting?

15 A I did.

16 Q And what did you record it with?

17 A Again, the Sony digital recorder I described earlier.

18 Q And what did you do with the recording after you recorded
19 it?

20 A Went home, put it on my computer, and then transferred it
21 to a CD and gave it to the Board agent.

22 Q Did you ever listen to the whole recording?

23 A Yes, I did.

24 Q Now, I'm going to play the beginning of what's been marked
25 as GC Exhibit 9(b).

1 (Audio recording played at 10:39 a.m.)

2 Q BY MS. DEMIROK: Can you recognize what's going on here in
3 the beginning?

4 A I'm putting the -- turning on the recorder and putting it
5 in my vest pocket.

6 Q And I stopped the recording at 22 seconds. I'm going to
7 move forward towards the beginning of the meeting.

8 (Audio recording played at 10:39 a.m.)

9 Q BY MS. DEMIROK: Did you recognize that voice?

10 A I do.

11 Q And who is that?

12 A That's Ivan Vaivao.

13 Q And I'm at eight minutes and 39 seconds in the recording.
14 Is that an accurate representation of the beginning of that
15 meeting?

16 A Yes, it is.

17 (Audio recording played at 10:40 a.m.)

18 Q BY MS. DEMIROK: I'm at 36 minutes in the recording. Do
19 you recognize that voice?

20 A That's Brian Nicklen.

21 Q And do you know what he was talking about at this point?

22 A He was talking about the '98 -- well, at that point he was
23 talking about his membership in the Teamsters.

24 Q And was this more towards the beginning, middle or end of
25 the recording?

1 A End. End of the recording.

2 (Audio recording played at 10:41 a.m.)

3 Q BY MS. DEMIROK: Was that an accurate representation of
4 the end of the meeting?

5 A Yes, it was.

6 Q And now, the -- this was at 39 minutes and 14 seconds, and
7 the entire recording is 54 minutes and 48 seconds. What did
8 you record after the meeting?

9 A It was just moving from there to a place where I could
10 shut it off.

11 Q Okay. I'm going to play for you some more at the end, and
12 you can tell us if you can identify any voices.

13 (Audio recording played at 10:43 a.m.)

14 Q BY MS. DEMIROK: Do you recognize that voice?

15 A That's me.

16 Q And do you know what you were talking about at that point?

17 A Yes, I do.

18 Q And were you in the meeting at this time?

19 A Honestly, I don't remember. I believe I am, but I don't
20 remember.

21 Q Maybe when we play some more you can tell us.

22 A I can tell you, yes.

23 (Audio recording played at 10:44 a.m.)

24 THE WITNESS: I'm in a locker room.

25 Q BY MS. DEMIROK: I'm sorry, where were you?

1 A I'm in a locker room having that conversation.

2 Q And who were you having that conversation with?

3 A Some of the guys after the meeting.

4 Q And what were you talking about?

5 A We were talking about the '98 campaign and the court
6 decision in 2005.

7 Q And we're at 45 minutes and 39 seconds. I'm going to move
8 even closer to the end of the recording.

9 (Audio recording played at 10:45 a.m.)

10 Q BY MS. DEMIROK: And, Mr. Phipps, the meeting has ended.
11 Why did you record all of this?

12 A I still had not gone to a place where I could turn off the
13 recorder without being seen. We had gone from -- the group of
14 us had gone from that conference room, which is right by the
15 locker room, to the locker room, changed. I still had the
16 recorder in my vest. For me to take it out of my vest, someone
17 would have seen it. I put my vest on, walked out of the
18 warehouse, we're still talking. You heard the plane going
19 overhead, we were out in the parking lot at that point. I did
20 not turn that recorder off until I actually got into my car.

21 Q Okay. I'm just going to play the very end of this.

22 (Audio recording played at 10:46 a.m.)

23 Q BY MS. DEMIROK: Now, Mr. Phipps, is that an accurate
24 representation of the end of your recording?

25 A Yes.

1 Q And from what we have heard about what took place in the
2 meeting, was that an accurate representation of the meeting you
3 recorded?

4 A Yes, it was.

5 Q And do you have any reason to believe that the Board agent
6 did anything to the recording as far as editing once you gave
7 it to her?

8 A No, I do not.

9 MS. DEMIROK: Your Honor, at this time General Counsel
10 would move to admit what's been marked as GC Exhibit 9(a) and
11 9(b). But I would like to know that anything outside of the
12 meeting we wouldn't be introducing for substantive purposes.

13 JUDGE WEDEKIND: Okay.

14 MR. DAWSON: Subject to a request for reconsideration, no
15 objection.

16 JUDGE WEDEKIND: Thank you. It's received. 9(a) and (b).

17 **(General Counsel Exhibit Number 9(a) and 9(b) Received into**
18 **Evidence)**

19 Q BY MS. DEMIROK: Now, Mr. Phipps, I want to draw your
20 attention to March 31st, 2015. Did you report to work that
21 day?

22 A Yes, I did.

23 Q And did you attend any meetings on that day?

24 A Yes, I did.

25 Q Were there other employees who also attended that meeting?

1 A Yes, there were.

2 Q And what kind of meeting was this?

3 A This was the yearly state of Shamrock, for lack of a
4 better term, town hall.

5 Q And where was this meeting held?

6 A Auditoriums 1, 2 and 3 again.

7 Q And who conducted this meeting?

8 A This was conducted by Bob Beake, vice president of HR.

9 Q And had you ever attended meetings like this before?

10 A Yes, we had.

11 Q Now, you mentioned that Bob -- Mr. Bob Beake conducted
12 this meeting. I'd like you to briefly walk us through what
13 happened during the meeting.

14 A Mr. Beake called the meeting to order, gave us a brief
15 summary of what he would be talking about. Said that Norm and
16 Kent McClelland were unable to attend the meeting, but had done
17 a short video, and he would show us Norm's first, and then
18 Kent's toward the end of the meeting. He then showed the video
19 for Norm; went into the state of Shamrock, talked about the new
20 contract with Wendy's, how we had expanded up the west coast,
21 how we had expanded a new milk plant into Virginia. Talked
22 about how the company had done \$3 billion in sales; talked a
23 little bit about the profit sharing. Talked about 401k's, the
24 stock that the employees could buy.

25 He then showed us the video for Kent, went into a little

1 bit about the new HR portal. Introduced Vince. I don't know
2 Vince's last name, he was the new HR manager. And Vince
3 introduced Cindy Pimental, the benefits manager. And then
4 Cindy talked about the new portal. Bob Beake then summarized
5 and opened it up for questions.

6 Q Did any employees ask any questions?

7 A Yes.

8 Q And do you recall who any of those employees were?

9 A Yes. Thomas Wallace, I remember, asked a question.

10 Q Do you remember what question he asked?

11 A He asked whether or not we could have our old insurance
12 back.

13 Q And did Mr. Beake respond?

14 A Mr. Beake told him that the decision has been made, it's
15 not cost effective for the company to have the old insurance,
16 and that we would stay -- we would have to just manage or stay
17 with what we had.

18 Q Did anyone else react to Mr. Wallace's question?

19 A There was a chuckle throughout the room. I chuckled at
20 it.

21 Q Why did you chuckle?

22 A It's a question that we wanted to have answered positively
23 for -- ever since they gave us the catastrophic insurance. But
24 we all knew what the answer would be.

25 Q Okay. And are you speaking for everybody or are you

1 speaking for yourself when you say that?

2 A I have a tendency to speak for everybody, but I mean
3 myself.

4 Q Did Mr. Wallace ask any other questions?

5 A He asked, barring the old insurance plan, would there been
6 any way the company could fund the HSA we had fully since we
7 had done \$3 billion in profit. And Bob Beake corrected him and
8 told him that it was sales, and that we make pennies on the
9 cases, and would not be able to fund the HSA fully. And most
10 companies didn't even fund it to the extent that Shamrock did.

11 Q How would you describe the tone of Mr. Wallace's voice
12 when he asked those questions?

13 A Conversational, matter of fact.

14 Q And where were you sitting during this meeting?

15 A I was just back about a third from the front, from the
16 left side.

17 Q And where was Mr. Wallace?

18 A He was behind me.

19 Q Did any other employees ask questions during the meeting?

20 A There were other questions asked about the profit sharing.
21 Some questions were asked about the company stock.

22 Q About how long did this meeting last?

23 A I believe the meeting was a little over an hour.

24 Q And did you notice any disturbances towards the end of the
25 meeting?

1 A I did not.

2 Q You mentioned that Mr. Beake introduced someone by the
3 name of Vince during that meeting. Do you know Vince's last
4 name?

5 A I do not know Vince's last name.

6 Q And where was Vince towards the end of the meeting?

7 A Vince, as I remember, was on the upper right-hand side.
8 He had crossed from the left, gave a little introduction,
9 introduced Cindy and then moved to the right-hand side. My
10 right-hand side of the front of the room.

11 Q And where was Mr. Beake at this time?

12 A Mr. Beake, as I remember, was on the left-hand side.

13 Q Near the front or near the back?

14 A Front. Most managers, when they give a meeting like that,
15 they all stay in the front and against the wall. It's kind of
16 an area they congregate.

17 Q Did you record this meeting?

18 A I did.

19 Q And when did you start recording?

20 A Before the meeting started.

21 Q And what did you record it with?

22 A Again, the Sony digital recorder I had.

23 Q And what did you do with the recording after you took it?

24 A I took it home, downloaded it on my computer, and then
25 transferred it to a CD for the Board agent, gave it to her.

1 Q And have you ever listened to this entire recording?

2 A I have.

3 (Audio played at 10:56 a.m.)

4 Q BY MS. DEMIROK: Do you recognize what that was?

5 A That's the beginning of the meeting, everybody filing into
6 the auditoriums.

7 Q And I played up until the 20-second mark.

8 (Audio played at 10:56 a.m.)

9 Q BY MS. DEMIROK: Do you recognize that voice?

10 A That would be Bob Beake.

11 Q And is that an accurate representation of the beginning of
12 this meeting?

13 A Yes, ma'am.

14 (Audio played at 10:56 a.m.)

15 Q BY MS. DEMIROK: Do you recognize that voice?

16 A That's Norm.

17 Q Okay. And we're at 48 minutes and 20 seconds.

18 (Audio played at 10:56 a.m.)

19 Q BY MS. DEMIROK: And do you recognize that voice?

20 A That's Cindy Pimental.

21 Q Okay. And we're at 50 minutes and 40 seconds.

22 (Audio played at 11:00 a.m.)

23 Q BY MS. DEMIROK: Did you recognize the voice of who asked
24 the question?

25 A That's Thomas Wallace.

1 Q Did you recognize the voice that started to answer his
2 question?

3 A Yeah. It's Bob Beake.

4 (Audio played)

5 MS. DEMIROK: Now I'm going to move to the end of this
6 meeting.

7 (Audio played)

8 Q BY MS. DEMIROK: Is that an accurate representation of the
9 end of the meeting?

10 A Yes, it is.

11 Q And of what you recorded?

12 A Yes, it is.

13 Q And did you continue recording?

14 A I continued to record until I could turn it off, yes.

15 MS. DEMIROK: Okay. And we stopped the recording at 58
16 minutes and 14 seconds. The recording itself is one hour,
17 eight minutes and 51 seconds. I'm going to move this to the --
18 to the end of the recording.

19 (Audio played)

20 Q BY MS. DEMIROK: Mr. Phipps, is that an accurate
21 representation of when you stopped recording?

22 A It is.

23 MS. DEMIROK: Your Honor, at this time, I'd move to admit
24 what's been marked as GC Exhibit 11(a) and 11(b).

25 MR. DAWSON: Subject to the request to reconsider, no

1 objection.

2 JUDGE WEDEKIND: Thank you.

3 That's received, 11(a) and (b).

4 **(General Counsel Exhibit Number 11(a) and 11(b) Received into**
5 **Evidence)**

6 Q BY MS. DEMIROK: Now, Mr. Phipps, we just talked about the
7 meeting on March 31st, and now I'm going to draw your attention
8 to April 6, 2015. Did you report to work that day?

9 A I did.

10 Q Did anything significant happen on that day?

11 A Yes.

12 Q What was that?

13 A Thomas Wallace was fired.

14 Q What was your understanding of why Mr. Wallace got fired?

15 MS. DEMIROK: Objection to the extent not based on
16 personal knowledge.

17 MS. DEMIROK: May I follow up? Or I'm just asking what
18 his understanding was --

19 JUDGE WEDEKIND: Why is it relevant?

20 MS. DEMIROK: Well, I think there is some question as to
21 why he was terminated, and someone who was working in the --
22 working in the warehouse may have some knowledge or may have
23 heard about why he was fired.

24 JUDGE WEDEKIND: Do you have any personal knowledge of why
25 Mr. Wallace was fired?

1 THE WITNESS: Only what Mr. Wallace told me.

2 JUDGE WEDEKIND: Is this -- is the subpoena involved here,
3 the response to the subpoena? Are you seeking some kind of
4 adverse inference to use secondary evidence?

5 MS. DEMIROK: Well, actually, there would be quite a few
6 subpoenaed documents, as far as any communications regarding
7 Mr. Wallace's discharge, including the termination report that
8 was in his personnel file that we didn't receive at the time
9 that we requested the documents, or anything -- anything else
10 related to his discharge. So yeah, there would be quite a few
11 items on the subpoena that would be responsive.

12 JUDGE WEDEKIND: So you didn't receive anything at all?
13 You didn't receive emails --

14 MS. DEMIROK: Nothing regarding --

15 JUDGE WEDEKIND: -- notes, nothing?

16 MS. DEMIROK: Nothing regarding the reason why he was
17 discharged.

18 JUDGE WEDEKIND: But all you know for sure at this point,
19 is that there was a termination form?

20 MS. DEMIROK: There was, and I have -- I believe it was
21 done Friday. Friday, I received a copy of that termination
22 report, only after a witness testified that it did exist, and
23 then we got it that way.

24 JUDGE WEDEKIND: And Mr. Wallace, is he going to testify?

25 MS. DEMIROK: He is.

1 JUDGE WEDEKIND: Okay. I'm going to allow it for now.

2 I'll let you argue about what weight, if anything, I should
3 give to it.

4 MR. DAWSON: Thank you.

5 JUDGE WEDEKIND: Because Mr. Wallace is going to
6 testify --

7 MR. DAWSON: Sure.

8 JUDGE WEDEKIND: So -- and I don't know the basis for
9 Mr. Wallace's knowledge, et cetera, so I'll allow it in for
10 now.

11 MR. DAWSON: Thank you.

12 Q BY MS. DEMIROK: Okay. So Mr. Phipps, what was your
13 understanding, if any, of why Mr. Wallace got fired?

14 A My understanding of why he was fired is because of the
15 question that he asked in the state of the town hall, state of
16 Shamrock meeting was considered rude, and he was -- he told me
17 that he was told in the termination meeting that senior staff,
18 Norm and Kent, had decided that if he wanted better insurance,
19 he could go look for it someplace else, and they were going to
20 give him that opportunity by letting him go.

21 Q Was that surprising to you?

22 A Very.

23 Q Why was that?

24 A I had never heard of an employee that was terminated for
25 asking any type of question. I have asked several myself that

1 would be considered rude and disrespectful and I'm still with
2 the company.

3 MS. DEMIROK: Your Honor, may I take a quick bathroom
4 break?

5 JUDGE WEDEKIND: Sure. Let's take five minutes.

6 MS. DEMIROK: Okay. Thank you.

7 JUDGE WEDEKIND: Off the record.

8 (Off the record at 11:08 a.m.)

9 JUDGE WEDEKIND: Okay. We're back on the record.

10 Q BY MS. DEMIROK: Now, Mr. Phipps, I'm going to draw your
11 attention to the end of April 2015. Did you make any
12 announcements in the warehouse?

13 A Yes, I did.

14 Q And can you tell us about that?

15 A I went into -- I believe it was April 26th, I went into
16 the upstairs break room around lunchtime. Got up, and asked
17 the guys if I could have their attention, made a brief
18 announcement and said, Hey, you may have heard, there's a push
19 for a union; that's true. I'm one of the committee members.
20 I'm organizing. If you have any questions, there's a lot of
21 false information going around. I can talk to you before or
22 after work, on breaks or lunches, and sat back down.

23 Q Did you make any other similar announcements after that?

24 A I did so on the 27th, again, upstairs break room. It was
25 the first break, if I remember right. I got up to make the

1 announcement, two or three employees got up to leave. I
2 basically said the exact same thing, but as I was saying it,
3 after these employees left, 20 seconds, 30 second later Ivan
4 Vaivao came into the room, looked very stern, taking long
5 strides like he had a purpose or he was angry.

6 He walked from the door to the coffee machine. It looked
7 like he was going to get a cup of coffee, turned around and
8 started talking to another employee that happened to be
9 standing there, and then another manager came in right behind
10 him 20 seconds later and walked within, I don't know, three or
11 four feet of where Ivan was, turned around and acted like he
12 was watching TV.

13 Q How were you feeling at that point?

14 A Nervous. Very nervous.

15 Q And did you report back to work after that?

16 A I did. After break was over, I went down to my forklift
17 and started working in aisle 17. As I was working in aisle 17,
18 Art Manning came through in a strip cart and asked me if it was
19 true what I said. I asked him what that was. He said, your
20 announcement, what you said upstairs.

21 I said, I can't talk to you about that Art. I can do
22 that, you know, on a break or before or after work. He said,
23 just watch yourself, because they watching both of us, so watch
24 your back. He turned around and left after that.

25 Q Where were you when you had this conversation?

1 A We were in aisle 17, the deli section.

2 Q Were any other employees present?

3 A No.

4 Q Had Mr. Manning been in the break room when you made your
5 announcement?

6 A No, he had not.

7 Q Did he ever tell you how he learned that information?

8 A He did not. I assumed it was through the grapevine, but
9 that's speculation on my part.

10 Q Now, I'm going to draw your attention to two days later,
11 April 29, 2015. Did you report to work that day?

12 A I did.

13 Q And did you attend any meetings on that day?

14 A I did.

15 Q When did you first learn about this meeting?

16 A I was at the cross dock dropping off a bulk pallet and
17 gotten off my lift to label it. Ivan Vaivao walked by me. I
18 believe, Ernie Nicklen was with him, if I remember right. Ivan
19 told me in a very stern tone, get upstairs, we're having a
20 meeting, and he kept walking. I thought I was getting fired.
21 I texted the Union rep and told him to standby to call David
22 Rosenfeld's office. I turned on my recorder and went upstairs.

23 Q And where did you go to upstairs?

24 A As I got to the top of the stairs, I was directed to the
25 upstairs training room. I walked in and sat down about three

1 rows from the back.

2 Q Was anyone else present?

3 A There, fortunately, were about eight to 10 other employees
4 in that room.

5 Q And aside from the employees, who else was there?

6 A Mark Engdahl was there; Jerry Kropman was there; Ivan
7 Vaivao was there; Brian Nicklen was there.

8 Q Who conducted the meeting?

9 A The meeting was conducted by Mark Engdahl, Ivan Vaivao and
10 Jerry Kropman. All three of them spoke.

11 Q And once the meeting started, did anyone tell you what the
12 general purpose of the meeting was?

13 A We were told the general purpose of the meeting was to
14 talk about the company's plans for the summer. There had been
15 a big stir the previous summer because they changed shifts, and
16 a lot of unhappy people and laid off 25 people. So we were
17 told the purpose of the meeting was to go over what they were
18 going to do this summer that was different. They passed out
19 two sheets of paper that were stapled together, each one had, I
20 don't know, eight, nine bullet points on it about what they
21 were doing.

22 Q Now, what did Mr. Engdahl say in conducting the meeting?

23 A Mr. Engdahl said before we got into that, he wanted to
24 talk about this Union thing. He pulled a piece of paper out of
25 his pocket and said that he understood who was behind the

1 organization of the Union. He said, you don't care what anyone
2 else thinks; you're doing this for your own purposes. He said
3 the Union would hurt Shamrock; it would hurt all of you.

4 He went on to say that the Union can only come to Shamrock
5 and ask for things, that the Employer doesn't have to agree to
6 anything; nothing, anything, he emphasized both those words.
7 He said it was up to the Employer to agree to things. He said
8 it was collective bargaining, that when you went into
9 collective bargaining, all you had to do was bargain in good
10 faith, and he said that the bargaining could go on forever.

11 Q Now, you said he pulled out a piece of paper out of his
12 pocket; is that something he gave to the employees?

13 A No. It was about the size of a steno-pad paper, and I
14 know he used those from a previous meeting he and I had had
15 back in September, but it was -- I could tell it had lines on
16 it. I didn't see the writing on it. I assume it was his
17 notes.

18 Q Was he referring to it as he conducted the meeting?

19 A Yes.

20 MS. DEMIROK: And I would just like to point out, for the
21 record, that those are notes that we subpoenaed and we have not
22 received a copy of.

23 Q BY MS. DEMIROK: How did you feel during this meeting?

24 A Very scared. I was -- to begin with, I was scared. Like
25 I said, I thought I was getting fired. After Mark started the

1 meeting making direct reference to me, I was getting angry.

2 MR. DAWSON: Objection. I don't think that was -- I think
3 that's an assumption.

4 JUDGE WEDEKIND: Did he refer to you by name?

5 THE WITNESS: He did not refer to me by name, no, but I'm
6 the only one who made an announcement. I'm the only -- excuse
7 me. I'm sorry, Your Honor.

8 Q BY MS. DEMIROK: Mr. Phipps, could you explain to us why
9 you -- why you thought he was referring to you?

10 A Because I made an announcement on the 26th and the 27th.
11 You don't do that at Shamrock. The --

12 MR. DAWSON: I have to object to that last statement as
13 well, Your Honor.

14 JUDGE WEDEKIND: I'm not sure what it means.

15 Q BY MS. DEMIROK: Mr. Phipps, was there anything that he
16 particularly said that made you believe that he was referring
17 to you?

18 A He said "You," and then when I asked him if it was an open
19 meeting, he was very angry. He said, "No, Steve."

20 Q Mr. Phipps, did you record this meeting?

21 A I did.

22 Q And what did you record it with?

23 A Again, the Sony recorder, a digital recorder that I had.

24 Q And what did you do with the recording after you recorded
25 it?

1 A I went home and put it on my computer. I downloaded the
2 recording to a CD and gave it to the Board agent.

3 Q And approximately, how long did this meeting last?

4 A A little over 30 minutes.

5 Q Now, I'm going to play for you what's been marked as GC
6 Exhibit Number 12(b).

7 (Audio played)

8 Q BY MS. DEMIROK: Mr. Phipps, so far, is this an accurate
9 representation of the recording you made on that day?

10 A Yes, it is.

11 (Audio played)

12 Q BY MS. DEMIROK: Do you recognize that voice?

13 A That's Mark Engdahl.

14 Q And is that an accurate representation of the beginning of
15 the meeting?

16 A Yes, it is.

17 Q And is it an accurate representation of the recording you
18 made?

19 A Yes, it is.

20 (Audio played)

21 Q And now I'm at 17 minutes and 41 seconds. Do you
22 recognize that voice?

23 A That's Ivan Vaivao.

24 (Audio played)

25 Q BY MS. DEMIROK: Now, Mr. Phipps, was that an accurate

1 representation of the end of the meeting?

2 A Yes, it was.

3 Q And was it an accurate representation of up until the
4 point where you stopped recording?

5 A Yes, it was.

6 Q Have you ever listened to this entire recording?

7 A Yes, I have.

8 Q And do you have any reason to believe that the Board agent
9 did any type of editing once you gave her a copy?

10 A I do not.

11 MS. DEMIROK: Your Honor, at this time, General Counsel
12 would move to admit what's been marked as GC Exhibit 12(a) and
13 12(b).

14 MR. DAWSON: Subject to request for reconsideration, no
15 objection at this time, Your Honor.

16 JUDGE WEDEKIND: Thank you. It's received, 12(a) and (b).
17 **(General Counsel Exhibit Number 12(a) and 12(b) Received into**
18 **Evidence)**

19 Q BY MS. DEMIROK: Now, after that meeting, did you report
20 back to work?

21 A Yes, I did.

22 Q And did anything happen after that?

23 A Yes.

24 Q What was that?

25 A 1:00 break, I was working in -- over in aisle 49, and I

1 had -- I had -- I was there and an employee rolled up that I
2 had known for since I've been there. He's been there about six
3 months longer than I have. He said, "I finally put two and two
4 together. I understand what you're doing. I want you to be
5 careful." He said, "We know how this place is." Basically, he
6 was warning me he was concerned about my wellbeing in the
7 company.

8 Q Now, why does this stick out in your mind?

9 A Because Joe Remblance interrupted us.

10 Q And who is Joe Remblance?

11 A Joe Remblance is a safety manager.

12 Q And when you went through your supervisory chain, you
13 didn't mention him; why is that?

14 A Joe Remblance is outside that direct chain of command.

15 Q Now, what happened when -- where was Mr. Remblance when
16 you first noticed him?

17 A When I first noticed him, he was at the end of the aisle
18 on the pedestrian walkway, which was about 60 to 70 yards away.
19 He was headed north toward the offices.

20 Q And where were you?

21 A I was on the dock side of aisle 49.

22 Q And you mentioned he interrupted you. Can you tell us
23 about that?

24 A Yeah. He walked from the pedestrian walkway, like I said,
25 about 70 yards or so, 60 or 70 yards, asked us if we were on

1 break. Asked me specifically if I was on break, and then asked
2 the other employee if he was on break. We both said yes. He
3 asked us what we were talking about, and we both looked at each
4 other and told him work. He tried to make a little small talk;
5 it was obvious, we didn't want to talk to him.

6 He started to walk away, turned around and asked me how
7 much time I had left on my break. I looked at my phone, which
8 had a clock on it, and told him a couple of minutes. He said,
9 be sure to get back to work when your break is over.

10 Q Now, had Mr. Remblance ever approached you like this
11 before?

12 A No.

13 Q And after he left, what did you do?

14 A We finished our conversation and when break was over, we
15 both went back to work.

16 MS. DEMIROK: Your Honor, if I could just have a moment?

17 JUDGE WEDEKIND: Sure. Off the record.

18 (Off the record at 11:32 a.m.)

19 Q BY MS. DEMIROK: Now, Mr. Phipps, I think there's some
20 documents in front of you? I'd like you to find what's been
21 marked as -- what's been marked as GC Exhibit 14.

22 A Yes.

23 Q There is a mark on the bottom, right-hand corner; is that
24 the one on the top?

25 A Yes, ma'am.

1 Q Oh, okay. Do you recognize that document?

2 A I do.

3 Q And how do you recognize that document?

4 A This was mailed to my home; I picked it out of my mailbox
5 on the 13th.

6 Q And who did you receive that letter from?

7 A Kent McClelland.

8 Q And while working at Shamrock, had you ever received a
9 letter like this before?

10 A I have not.

11 Q Now, Mr. Phipps, towards the end of May, what, if any,
12 Union organizing did you participate in at the warehouse?

13 A Toward the end of May, we were starting a education
14 campaign of flyering the warehouse. We started that off by
15 handing out some flyers at the Shamrock driveway, and then
16 moved into the warehouse throughout the month of May and
17 continued that.

18 Q Now, I want to draw your attention to May 25, 2015. Did
19 you pass out any flyers on that day?

20 A I did.

21 Q Where did you hand out these flyers?

22 A I was in the upstairs break room trying to cover all of
23 the break rooms that day.

24 Q Were any employees present?

25 A Yeah.

1 Q About how many?

2 A There were probably 18, 20 employees in there when I
3 started.

4 Q And in what break room was this?

5 A This was the upstairs break room.

6 Q Can you describe for us, in relation to where the
7 manager's offices are, where this break room is?

8 A The manager's offices are across the hallway or just down
9 the hallway and up a little bit as you head toward the locker
10 room. No more than 15, 20 feet away from the entrance to this
11 break room.

12 Q And what, if anything, happened after you passed out the
13 flyers in the break room?

14 A As I was passing out the flyers in the break room and
15 finished up, I was getting ready to leave. I told the guys if
16 they had any questions, let me know. I started to head toward
17 the door and got called over to a table by some employees who
18 had a question. This was in the far corner away from the door,
19 so I walked over to talk to them, and as I was talking to them,
20 I heard a very loud voice go, "Hey, guys," -- excuse me, Your
21 Honor, "How's it going? How are things?"

22 I turned around and Joe Remblance was there and I asked
23 him what he was doing. He was -- he said he was just saying hi
24 to the guys. It was obvious he was trying to talk over me so
25 they couldn't hear me or interrupt our conversation.

1 MR. DAWSON: Objection, Your Honor, on two grounds. You
2 know, obviously, the ground of speaking for Mr. Remblance's
3 motivations, but -- I mean, I could be wrong, but I don't
4 believe that this is alleged as a violation in the complaint,
5 unless this is background for a separate incident.

6 MS. DEMIROK: This is background information, what happens
7 immediately after this is something that we address in our
8 complaint.

9 JUDGE WEDEKIND: Okay. I'm going to sustain the objection
10 unless you get more clarification.

11 Q BY MS. DEMIROK: If you could, tell us what happened after
12 that, Mr. Phipps.

13 A Do you want me to continue?

14 JUDGE WEDEKIND: Well, I'm talking -- I'm sorry. I'm
15 going to sustain the objection about his characterization of
16 what Mr. Remblance was trying to do.

17 MS. DEMIROK: Okay.

18 JUDGE WEDEKIND: Unless you clarify it in some way.

19 MS. DEMIROK: No. I have no -- I have no problem with
20 that.

21 JUDGE WEDEKIND: Okay.

22 MS. DEMIROK: It's not necessary.

23 JUDGE WEDEKIND: I'm going to allow you to go ahead to
24 show what happened later.

25 MS. DEMIROK: Okay. Thank you.

1 Q BY MS. DEMIROK: Mr. Phipps, you were describing what
2 happened after -- or as you were passing out flyers, and you
3 mentioned Mr. Remblance had walked in. Did anything else
4 happen while you were in the break room?

5 A Okay. I finished talking to the employees. I noticed
6 that a couple of sanitation employees had come in, new ones.
7 They were sitting at the table closest to the door on the end.
8 A third one was there, so I went and passed out flyers to them.
9 So three flyers, and then I -- as I turned around, I noticed
10 there was an employee in the middle of the room that I had
11 missed with a flyer, so I walked back and handed him a flyer.

12 I turned around, and Karen Garzon was standing next to the
13 two employees on the end, and I had laid the flyers -- their
14 arms were like this, I laid the flyers right here. She reached
15 between their arms and picked up both flyers. I walked over
16 and stood on the other side of the employee; she was on this
17 side of the employee, and then I told her she couldn't do that;
18 it was a violation of their rights, unless they gave her
19 permission to take it, and she looked down at them and said,
20 well, you guys don't want these, do you?

21 Then neither one of these employees speak very good
22 English, but they were both wide-eyed, drop-mouth and just
23 shook their heads no and let her take them.

24 Q And we haven't talked about Ms. Garzon before. Do you
25 know what her title is?

1 A She is the sanitation supervisor.

2 Q And do you know what department those employees worked in
3 that you just mentioned?

4 A Sanitation.

5 Q Now, this was at the end of May. In June, did you do any
6 flyering?

7 A Yes.

8 Q Now, how often were you passing out flyers through June?

9 A We were -- we were at one point, hitting it as hard as
10 once a week. It would take us two or three days to get to all
11 of the break rooms and answer questions.

12 Q And did you ever leave the flyers anywhere in the
13 warehouse?

14 A Yeah. In the upstairs break room, there's a information
15 counter that the company has. They leave information for
16 Mudder runs, Susan G. Komen Foundation bike things, that kind
17 of stuff. I would leave them there.

18 Q Now, what, if anything, happened to the flyers that you
19 left there?

20 A Karen Garzon came in and picked up several of them.

21 Q And how do you know that?

22 A I saw her.

23 Q And when you saw her pick up those flyers, did you see her
24 pick up anything else?

25 A No.

1 Q Now, Mr. Phipps, just to put a timeframe on it, let's say,
2 since you made your announcement in the warehouse, do you know
3 of any employees that received wage increases since that time?

4 A Yes, I do.

5 Q And maybe we should go by -- by group. Do you know what
6 groups, if any, received wage increases?

7 A Four groups.

8 Q I'm sorry. What was that?

9 A Four groups received wage increases.

10 Q And what groups were those?

11 A Will-call, the will-call pickers; the returns dock
12 associates, sanitation associates and the thrower associates.

13 Q Do you know if they all received the same wage increase?

14 A No, they did not.

15 Q Can you tell us what you know about the will calls wage
16 increase?

17 A The will call wage increase was \$2 an hour. It was
18 retroactive to the beginning of the pay period, which was very
19 unusual.

20 Q Can you tell us what you know about the wage increase the
21 pickers received?

22 A That would be the will-call pickers.

23 Q The will-call pickers, okay.

24 A Yes. That's --

25 Q And that's different from the will call?

1 A No, ma'am. That is the same. I'm sorry.

2 Q Okay.

3 A I did not make that clear.

4 Q And I might have missed a group. So we've got the will-
5 call pickers, which you testified about, and then, so I guess
6 the next one would be the return docks; is that the --

7 A Yeah, the --

8 Q -- last group?

9 A -- return-dock associates, they received \$2 an hour.

10 Q And what about --

11 A Let me -- let me re-clarify that, please. They were to
12 receive \$2 an hour. The last time I talked to one of them,
13 they had not received it yet. It had not been approved by
14 corporate.

15 Q Okay.

16 A But that was after we brought it out in a flyer.

17 Q And what do you know about the throwers receiving a wage
18 increase?

19 A The throwers received \$1 an hour, again, retroactive on
20 the pay period.

21 Q And what group am I missing?

22 A Sanitation.

23 Q Sanitation. Can you tell us what you know about the
24 sanitation?

25 A What I know is they received \$1 an hour. They were one of

1 the first groups to get a raise.

2 Q And how do you know all of this?

3 A Talking to associates.

4 Q Do you know if the sanitation wage increase was
5 retroactive?

6 A I do not know if that one was retroactive or not.

7 Q Now, you've worked at Shamrock for almost 20 years.

8 A Yes, ma'am.

9 Q In your experience, how often do wage increases like this
10 come about?

11 A Rarely. You will see a wage increase on salaried
12 employees of about -- or hourly employees of about 3 percent, 5
13 percent, on a normal basis, and to have one that was
14 retroactive on the pay period is unheard of in my experience.

15 MR. DAWSON: Your Honor, if I -- if I may request a
16 standing objection to the line of questioning conditioned on
17 our request for a special permission to appeal. Understanding
18 that Your Honor has already ruled on this issue, if I could
19 just state that for the record, if that would be okay?

20 JUDGE WEDEKIND: Just tell me what the objection is,
21 again.

22 MR. DAWSON: Sure. I believe, and I could be incorrect,
23 but I believe Your Honor ruled that the General Counsel would
24 be permitted to provide evidence of the wage increase through
25 secondary evidence, and so we haven't -- we haven't been

1 objecting on that -- on that basis.

2 JUDGE WEDEKIND: Okay.

3 MR. DAWSON: But --

4 JUDGE WEDEKIND: So because it's hearsay; is that what
5 you're saying?

6 MR. DAWSON: Yeah. Hearsay personal knowledge.

7 JUDGE WEDEKIND: All right. Just as an aside, I haven't
8 seen that special appeal. Did you file a special appeal to my
9 ruling on sanctions, or just to the ruling --

10 MR. DAWSON: Just to the --

11 JUDGE WEDEKIND: -- of the petition to revoke?

12 MR. DAWSON: -- to the petition revoked, yes, Your Honor.

13 JUDGE WEDEKIND: Okay. So you haven't actually filed an
14 appeal on the sanctions?

15 MR. DAWSON: That's correct, Your Honor.

16 JUDGE WEDEKIND: Okay.

17 MR. DAWSON: The sanctions would be, if the petition to
18 revoke would be changed, the --

19 JUDGE WEDEKIND: Oh, I see. I got it.

20 MR. DAWSON: -- sanctions would --

21 JUDGE WEDEKIND: I got it. Okay.

22 Any response?

23 MS. DEMIROK: None, other than, you know, we ought -- we
24 did subpoena payroll records that would show these wage
25 increases. We did not receive any payroll records, and so for

1 that reason, you know, we have to put this on with secondary
2 evidence.

3 JUDGE WEDEKIND: Okay. Do you have any other evidence?

4 MS. DEMIROK: We may have some other employees testifying
5 in regards to something along -- you know, along the same lines
6 as what Mr. Phipps has testified to.

7 JUDGE WEDEKIND: Are any of them in these four groups?

8 MS. DEMIROK: No.

9 JUDGE WEDEKIND: Well, I think this is our first
10 objection. Did you receive any evidence at all with respect to
11 the wage increases?

12 MS. DEMIROK: None whatsoever.

13 JUDGE WEDEKIND: And --

14 MS. DEMIROK: And I might add, you know, when we were
15 going over the subpoena, I recall and maybe we can look back at
16 the transcripts, but Respondent's counsel made a representation
17 that it was their understanding that the fact that there was a
18 wage increase wasn't at issue.

19 JUDGE WEDEKIND: Does the Plaintiff allege --

20 MS. DEMIROK: That they weren't -- they weren't contesting
21 that there was a wage increase. So maybe we could even work
22 further on some stipulations, if that would --

23 MR. DAWSON: Yeah. Yes, Your Honor, that -- that's
24 without, you know, speaking -- having spoken to the client yet,
25 I believe counsel -- the General Counsel is correct. I

1 don't -- I don't believe there's a dispute over whether there
2 was an increase, but I'm not sure on the amounts. That would
3 be the only --

4 JUDGE WEDEKIND: And does the complaint allege that that's
5 unlawful?

6 MS. DEMIROK: Yes, it does.

7 MR. DAWSON: It does, Your Honor.

8 JUDGE WEDEKIND: It does?

9 MR. DAWSON: Yeah.

10 JUDGE WEDEKIND: Okay. So your answer denied the
11 allegation, but you're not disputing that the wage increase
12 occurred?

13 MR. DAWSON: That's correct.

14 JUDGE WEDEKIND: Okay. And --

15 MR. DAWSON: And there's --

16 JUDGE WEDEKIND: Well, why haven't we -- well, but there's
17 been no stipulation to-date as to whether they occurred?

18 MS. DEMIROK: There has been no stipulation to-date.

19 JUDGE WEDEKIND: And there's been no stipulation as to the
20 date of the increase.

21 MS. DEMIROK: No.

22 MR. DAWSON: No, but I -- I'm not aware of the dispute on
23 that, so I believe that's something we could work through
24 relatively quickly just on the issue of amounts, and to the
25 best of my knowledge, I think those amounts are correct, but

1 I'd have to double-check.

2 JUDGE WEDEKIND: This is such an odd situation. I don't
3 understand why these stipulations weren't reached earlier, and
4 here you're objecting on the grounds of hearsay, but yet you
5 admit that they occurred. You know, it's just so odd. I've
6 never seen anything like it, as I've said three times earlier.

7 MR. DAWSON: Yes, Your Honor.

8 JUDGE WEDEKIND: I'm going to allow it in for now. You
9 can reach whatever stipulations you want, but I'm going to
10 allow it in.

11 MS. DEMIROK: Okay. Thank you, Your Honor.

12 JUDGE WEDEKIND: Sure.

13 MS. DEMIROK: I just have one more thing, Your Honor, and
14 I'm going to need the Smart Board for it.

15 JUDGE WEDEKIND: Okay.

16 MS. DEMIROK: So if we could go off the record --

17 JUDGE WEDEKIND: Sure.

18 MS. DEMIROK: -- so I can set things -- some things up.

19 JUDGE WEDEKIND: Off the record.

20 (Off the record at 11:51 a.m.)

21 JUDGE WEDEKIND: Back on the record.

22 Q BY MS. DEMIROK: Mr. Phipps, you testified that you saw
23 Ms. Garzon remove flyers from the break room; is that right?

24 A That is correct.

25 Q Did you ever make a recording of that happening?

1 A Yes, I did.

2 Q Okay.

3 MS. DEMIROK: Now, I'm going to play for everybody what's
4 been marked as GC Exhibit Number 24.

5 (Audio played)

6 Q BY MS. DEMIROK: Now, did you recognize who that was in
7 the video?

8 A That was Ms. Garzon.

9 Q And do you -- did you recognize what she picked up?

10 A She picked up my flyers.

11 Q How do you know that?

12 A Because I had placed them there.

13 Q And what color were your flyers?

14 A White.

15 Q I'm sorry?

16 A Those were white.

17 Q White. Did you ever have flyers that were different
18 colors?

19 A Yes, I did.

20 Q And what colors were those?

21 A We've gone gold, beige, blue, yellow.

22 Q And what did you record this on?

23 A I recorded this on my iPhone.

24 Q And what did you do with the recording after you made it?

25 A I emailed it to the Board agent.

1 Q And after watching this, do you have any reason to believe
2 that it's been edited in any way?

3 A No, it hasn't.

4 Q And just for reference, where -- where is this that we're
5 looking at?

6 A This is the upstairs break room.

7 MS. DEMIROK: Your Honor, at this time, General Counsel
8 would like to move to -- move to admit what's been marked as GC
9 Exhibit Number 24.

10 JUDGE WEDEKIND: Any objection?

11 MR. DAWSON: No objection, but if we could, just leave
12 that up so that we can use it on cross, because without
13 bringing -- however they got that to work, I don't -- I don't
14 want to try to repeat it.

15 JUDGE WEDEKIND: Sure. Is it a -- what is it?

16 MS. DEMIROK: We have it on flash drive.

17 JUDGE WEDEKIND: A flash drive? Okay. It's received.
18 Thank you.

19 **(General Counsel Exhibit Number 24 Received into Evidence)**

20 MS. DEMIROK: No further questions, Your Honor.

21 JUDGE WEDEKIND: Okay. Do cross after lunch?

22 MR. DAWSON: Yes, Your Honor.

23 JUDGE WEDEKIND: Okay. Off the record.

24 (Off the record at 12:07 p.m.)

25 JUDGE WEDEKIND: Okay. Back on the record.

1 MS. DEMIROK: Your Honor, if I may just ask a couple more
2 questions before we turn over.

3 JUDGE WEDEKIND: Sure.

4 MR. DAWSON: And I meant to ask before we adjourned, real
5 quick, if there were any affidavits other than May 24th, May
6 28th, and August 21st.

7 MS. DEMIROK: No, there are not.

8 MR. DAWSON: Okay, all right.

9 JUDGE WEDEKIND: And you already have them?

10 MR. DAWSON: And I do. Yes, Your Honor.

11 JUDGE WEDEKIND: And you already have it. Great, thanks.
12 Go right ahead.

13 MS. DEMIROK: Okay.

14 Q BY MS. DEMIROK: So, Mr. Phipps, before I stop with my
15 questioning, I just had a few follow-up questions. Now do you
16 work with someone named Mr. -- Mario Lerma?

17 A Yes, I do.

18 Q And have you ever listened to any recordings that you
19 didn't record yourself?

20 A Yes, I have.

21 Q And who do those come from?

22 A Mario Lerma gave me one. Gilbert Jaquez gave me another
23 one.

24 Q And what kind of -- how did Mr. Lerma give you those
25 recordings that you heard?

1 A It was in a flash drive, thumb drive.

2 Q Is this the flash drive?

3 A Yes, ma'am.

4 MS. DEMIROK: And let the record reflect I'm holding up a
5 black flash drive.

6 Q BY MS. DEMIROK: Now what did you do with the recordings
7 that he gave you as far as giving them to the board agents?

8 A He gave it to me. I plugged it in, in my computer,
9 downloaded it, and then transferred it to a CD and gave it to
10 the board agent.

11 Q And of those recordings, do you know if there was a
12 recording from March 26th, 2015?

13 A I believe that was the one that Lerma gave me.

14 Q And was there another one where -- from May 5th, 2015,
15 where he was --

16 A I don't recall.

17 Q Okay.

18 A If I remember right, there were -- never mind. I'm sorry.

19 Q And did you use the same software that you used in burning
20 the CDs of the recordings that you made?

21 A No. I actually used -- it was the Microsoft software. I
22 forget. The name escapes me right now, but it's one that comes
23 with your computer.

24 Q Okay. And then just tell us again. In what format did
25 you give them to the board agent?

1 A CD.

2 Q Okay. Did you make sure that the -- what you burned was
3 the full recording?

4 A Yes, ma'am.

5 Q And regarding the video that we watched earlier, did you
6 also take pictures that day?

7 A I've taken a lot of pictures and a lot of video over the
8 course of the months. I may have taken pictures that day. I
9 would have to double check my iPhone and see what the dates are
10 on it.

11 Q And did you give any of those pictures to the board agent?

12 A Yes, I did.

13 MS. DEMIROK: No further questions.

14 JUDGE WEDEKIND: Cross.

15 MR. DAWSON: Thank you, Your Honor.

16 **CROSS-EXAMINATION**

17 Q BY MR. DAWSON: Good morning. Sorry. Good afternoon, Mr.
18 Phipps. Mr. Phipps, I'm -- my name is Todd Dawson. I'm the --
19 I'm representing Shamrock. So I just -- I wanted to ask you
20 some questions. And I'll try to be as brief as I can. Have
21 you met any -- with anyone to prepare your testimony?

22 A Yes, I have.

23 Q Okay. Who did you meet with?

24 A Ms. Demirok.

25 Q Ms. Demirok. Okay. Was that today?

1 A Not today, no.

2 Q Okay. Was it yesterday?

3 A No.

4 Q When did you meet with Ms. Demirok?

5 A I met with her, off and on, over the course of the last
6 week or so. I think about three days total.

7 Q Okay. And you met in person?

8 A Yes, we did.

9 Q Did you review any documents?

10 A We reviewed the letter from Kent McClelland.

11 Q Okay. That was GC Exhibit 14, I think.

12 A Yes. I still have it in front of me.

13 Q Okay. Anything else? Any other documents that you
14 reviewed?

15 A Not documents, no. Nothing else that I can think of at
16 this time.

17 Q Okay. Anything -- any other items you reviewed?

18 A My notes.

19 Q Your notes. Okay. Did you review any audiotapes?

20 A Not --

21 Q Or I shouldn't say tapes. I guess that's outdated. Audio
22 recordings.

23 A Not during the course of what we were working with, no.

24 Q Okay. The last -- not last week I guess.

25 A No.

1 Q Okay. Do you know anything about the testimony thus far
2 in the case?

3 A I know general terms of just someone -- like Ivan was on
4 Tuesday and Wednesday. But as far as specific, what people
5 said and that kind of thing, no.

6 Q Okay.

7 A Absolutely not.

8 Q All right. And you haven't discussed the proceeding with
9 anyone?

10 A No, other than what I've mentioned.

11 Q Okay.

12 A You know.

13 Q Correct. Right. Right. So, Mr. Phipps, you're aware of
14 Shamrock's open door policy, right?

15 A Yes, I am.

16 Q And I think you mentioned it a couple of times in here in
17 your direct?

18 A Yes, I did.

19 Q And you've used the open door policy to make complaints in
20 the past, right?

21 A I have.

22 Q And just as an example, I think it was May of 2014, you
23 made a complaint. I think it was about the schedule change,
24 when Shamrock combined nightshift; is that right?

25 A May 2014. That would be the summer.

1 Q Going into summer, yes.

2 A We talked a lot about that, off and on.

3 Q Do you remember making a complaint to Ivan Vaivao, Jerry
4 Kropman, and Armando Gutierrez?

5 A I talked to all three of those people about the changes
6 and what was going on, yes.

7 Q You also made an appointment on September 12th of 2014,
8 with Mark Engdahl. Do you recall?

9 A Yes, I did.

10 Q And Mark is the VP of operations, right?

11 A Yes, he is.

12 Q And the purpose of that appointment was to discuss some
13 additional complaints about how management was treating
14 employees?

15 A Yes.

16 Q And Mr. Engdahl told you it was his job to fix problems?

17 A He did.

18 Q Okay. He also said that he took your complaints seriously
19 and he'd look into them.

20 A That's what he said, yes.

21 Q Now in addition to associates approaching management,
22 Shamrock also schedules meetings with employees to communicate
23 information on a number of items, correct?

24 A They do.

25 Q And they solicit feedback from employees at those

1 meetings?

2 A Sometimes.

3 Q And these are -- some of them are big meetings. Some of
4 them are small meetings. Some are individual meetings, right?

5 I know that's compound. If I need --

6 A It is very compound, yes.

7 Q Okay. So some -- there are some --

8 A They use --

9 Q -- let's say big meetings.

10 A -- all of them, yes --

11 Q Yeah.

12 A -- I think is what you're getting at.

13 Q Correct, yeah. Big meetings, let's say over 100 people.

14 A Uh-huh.

15 Q They have those meetings, right?

16 A Sure. And those are called town halls.

17 Q Town hall. Right. Right. Small meetings, so let's say
18 under 20 people.

19 A Yeah.

20 Q And then sometimes they have individual meetings?

21 A Rarely, but yes.

22 Q Okay. Now for -- as an example of kind of what we call
23 the smaller meeting, they've had roundtable meetings from time
24 to time, to figure out what issues associates have that need to
25 be addressed?

1 A From time to time, yes.

2 Q From time to time. And I think you've expressed the
3 opinion that nothing really ever gets fixed because of these
4 meetings, right?

5 A I think what I said was not much gets fixed.

6 Q Not much gets fixed.

7 A I've seen minor things get fixed. But as far as major
8 issues, no.

9 Q Okay. But you would agree that Shamrock has conducted
10 hundreds of these roundtable meetings?

11 A How big of a timespan are you talking about?

12 Q Within your knowledge. So since you --

13 A Well, I've been there 20 years. So yes, that would be an
14 accurate statement.

15 Q Okay. Then there's -- there are other meetings. Like,
16 for example, in late May or early June of 2014, do you recall
17 Jerry and Ivan, and I mean Jerry Kropman and Ivan Vaivao, they
18 conducted a meeting with about 100 employees on the schedule
19 change? Do you recall that?

20 A Are you referring to the start of the shift and the fact
21 that they were talking about laying off people?

22 Q Correct. Correct.

23 A That was the meeting where they threatened to fire us,
24 yes.

25 Q Well, I don't know about that, but that's --

1 A I do.

2 Q But that was the meeting -- that was late May, early June
3 2014?

4 A Something like that, yeah.

5 Q Okay. And they held that meeting because all of the
6 complaints regarding the change?

7 A My opinion, it was to lay down the law and tell us what
8 was going on.

9 Q So you don't think they held the meeting because of the
10 change?

11 A I didn't say that.

12 Q I'm sorry. I'm sorry. You're right. Is it your
13 testimony that they did not conduct the meetings to deal with
14 the complaints?

15 A They -- that meeting, if we're referring to the same
16 meeting that I recall, we were brought in. The rules for the
17 summer were laid down. And we were told what would be
18 happening over the course of the summer. We were told that if
19 we did not work up to production, that we would be fired. And
20 they had 25 other people that would be willing to come in and
21 take our place.

22 Q Okay. You gave a declaration -- or an affidavit -- I'm
23 sorry -- to the Board in this case, correct? Actually, several
24 affidavits to the NLRB.

25 A Yes.

1 Q You gave an affidavit on May 21st; is that right?

2 A I gave I think two or three of them.

3 Q Two or three. Okay. And each time, you were put under
4 oath. Do you recall that?

5 A Yes, I was.

6 Q So it's kind of, you know, the truth, the whole truth,
7 nothing but the truth?

8 A Sworn statement, yes.

9 Q Okay. You told the truth, right?

10 A Uh-huh.

11 Q And you told the whole truth and nothing but the truth?

12 A Everything I understood to be true, yes.

13 Q Okay. I'm going to hand you a copy of what I'll mark
14 Respondent's Exhibit 1.

15 **(Respondent Exhibit Number 1 Marked for Identification)**

16 Q BY MR. DAWSON: If you could just take a look at that and
17 let me know if that is a copy of the affidavit that you gave on
18 May 21st?

19 A That appears to be it, yes.

20 Q And if you look with me at page 12, lines 11 through 15.
21 If you'd let me know when you're there. And again, I asked
22 you if the meeting was held because of all the complaints
23 regarding the schedule change. And I believe your answer was
24 that it was not; am I correct?

25 A Because of the schedule change?

1 Q Correct. Because of the complaints regarding the schedule
2 change.

3 A I don't believe that meeting was conducted because of the
4 complaints of the schedule change.

5 Q Okay.

6 A And I've already stated -- never mind. I'm sorry.

7 Q I understand.

8 A I don't want to --

9 Q But if --

10 A -- be combative.

11 Q If you can look at line 11 with me.

12 A Uh-huh.

13 Q It says: Because of all of our complaints, the first
14 Sunday we all worked as a crew under the new schedule around
15 May 25th, 2014, or June 1st. The employee has a meeting with
16 all the employees before the shift started, in the upstairs
17 break room.

18 Did I read that correctly?

19 A Yes, you did.

20 Q Do you recall, on August 2014 -- you know Natalie Wright.
21 I think you mentioned her in your direct examination.

22 A Yes, I did.

23 Q Do you recall, in August 2014, Natalie walking through
24 your work area and asking how it was going?

25 A Natalie has walked through my work area several times,

1 yes.

2 Q Okay. Do you remember that particular occasion?

3 A You would have to refresh my memory as to what --

4 Q Sure. Sure, absolutely.

5 A -- you're talking about.

6 Q On this occasion, you told her, generally, that the mood
7 in the warehouse was angry.

8 A Yes, I did.

9 Q Okay. And that was August 2014?

10 A I don't recall the exact date.

11 Q You don't have any reason to dispute that, right?

12 A Right.

13 Q Okay. And if that's what you had said in your declaration
14 -- or affidavit -- I'm sorry. I keep calling it a declaration.
15 You wouldn't have any reason to quibble with that now, right?

16 A No.

17 Q Okay. And after you explained the problem, Natalie said
18 she'd check into your complaints, right?

19 A Uh-huh.

20 Q And she said she'd see what can be done to resolve them.

21 A We hear that a lot, yes.

22 Q But she did say that on that occasion?

23 A She said that to me on several occasions, yes.

24 Q But she said it on that occasion, right?

25 A Well, again, as I'd mentioned, she walks through my area

1 several times.

2 Q Sure.

3 A And we've had several conversations. And I will say this,
4 that when I have something that I bring up to her, she says
5 she'll look into it, yes.

6 Q Okay. And she'll say she see what she can do to resolve
7 it?

8 A Sometimes, yeah.

9 Q On September 15th of 2014, Jerry Kropman asked to meet
10 with you. Do you recall that?

11 A Yes.

12 Q And this was -- this would have been just a couple of days
13 after you met with Mr. Engdahl, right?

14 A Met with Mark on Friday, Jerry on Monday.

15 Q Okay. So Friday was the 12th. Monday, then, would have
16 been the 15th.

17 A Yeah.

18 Q Okay. That meeting you talked with Jerry for two hours?

19 A Uh-huh.

20 JUDGE WEDEKIND: Yes or no.

21 Q BY MR. DAWSON: He told you that --

22 THE WITNESS: Yes. I'm sorry.

23 MR. DAWSON: Yeah. I'm sorry. And I should have --

24 THE WITNESS: I'm sorry, Your Honor.

25 JUDGE WEDEKIND: That's fine.

1 Q BY MR. DAWSON: You told him about the same complaints
2 about how the warehouse was being managed, and so forth?

3 A Yes. We had that discussion.

4 Q And Jerry said that he understood you were upset, correct?

5 A That's what he said.

6 Q And he asked you to talk to him?

7 A Yes.

8 Q And after you told him what was going on, Jerry said he'd
9 look into it?

10 A Yes.

11 Q And he asked you for some time, right?

12 A Yes.

13 Q Around January 14th of 2015 --

14 MS. DEMIROK: Your Honor, I'm going to object to outside
15 the scope. And this maybe later than it could have, but this
16 line of questioning. We spoke about specific meetings that are
17 alleged in the complaint. We didn't talk about any other
18 meetings. We didn't even talk about whether there were other
19 meetings previously. So I'm going to have to object on the
20 ground that this is outside the scope of direct.

21 JUDGE WEDEKIND: There are some allegations in the
22 complaint about solicitation of grievances with a promise to
23 remedy. Were those part -- as part of the meetings that we put
24 in?

25 MS. DEMIROK: Those are part of the meetings that we

1 discussed on his direct, but these are not any of the meetings
2 that have been raised on our -- on cross-examination.

3 JUDGE WEDEKIND: Okay. Do you want to explain why you're
4 asking the question?

5 MR. DAWSON: Sure. And just to show that this was not a
6 practice that the Employer implemented once the union campaign
7 started, that, in fact, even in the year leading up to it, and
8 even earlier, that there was a continuous practice on the part
9 of the Employer seeking employee feedback and saying that they
10 would remedy issues that arose.

11 MS. DEMIROK: And I would suggest that they should call
12 them on -- during their case in chief if it's going to be part
13 of their defense.

14 JUDGE WEDEKIND: Well, you know, this is a little bit
15 different than the situation we had on Friday. He's on the
16 stand. He's given testimony about a lot of issues. The
17 Company would have a right to recall him if they wanted to. I
18 believe they can subpoena him to testify. Why not allow it to
19 go forward? Any response?

20 MS. DEMIROK: I would just ask if they would intend to
21 call him on their --

22 JUDGE WEDEKIND: I'm going to overrule your objection.

23 MS. DEMIROK: Thank you, Your Honor.

24 JUDGE WEDEKIND: Go ahead.

25 MR. DAWSON: Thank you, Your Honor.

1 Q BY MR. DAWSON: So, Mr. Phipps, I think I just asked you
2 about a conversation that you had with Tyler Armstrong. Do you
3 know Tyler?

4 A Yeah.

5 Q Tyler is a supervisor, right?

6 A Tyler has been fired.

7 Q Oh, right. He's a former supervisor. I guess I should
8 use a --

9 A Yeah.

10 Q -- different adjective. Okay. So Tyler is a former
11 supervisor at Shamrock. Was he employed at Shamrock on January
12 14th, to the best of your knowledge?

13 A To the best of my knowledge, he was.

14 Q Okay. Do you remember having a conversation with him on
15 that date?

16 A Are you referring to the one that we had in the aisle?

17 Q Yes.

18 A Yes, we did.

19 Q And that conversation was about how people felt -- and by
20 people, I'm going to say employee -- how they felt about the
21 upcoming change in the forklifter schedule.

22 A he asked me what the problems were in the warehouse.

23 Q Okay.

24 A Because he was being approached by a lot of different
25 people about things that were going on and people that were

1 very unhappy with what was happening. And he was getting, as
2 he said, blindsided by it.

3 Q Uh-huh. When he -- about what was happening, was it
4 specific to the schedule change or were there other --

5 A There were other issues.

6 Q -- things?

7 A Other issues.

8 Q Okay. But Mr. Armstrong had been approached, and he was
9 asking you what's going on?

10 A Uh-huh.

11 Q And you told him --

12 A I'm sorry. Yes.

13 Q -- the guys are upset?

14 A Yes.

15 Q All right. And Mr. Armstrong even called you later that
16 night to ask for some additional detail?

17 A Yes, he did.

18 Q And you gave him more details about the concerns, right?

19 A Yes, I did.

20 Q And he said he'd take those concerns to his boss and he'd
21 see what he could do?

22 A He did.

23 Q Now if I could shift gears for a minute. My recollection
24 from your direct examination is that you were the first
25 employee to make contact with the Union, is that right, to your

1 knowledge I should say?

2 A With the BCTGM I was, yes.

3 Q Yes, sir. And the first meeting you had with the Union
4 was November 22nd of 2014?

5 A What I remember is, in November, we talked with my
6 neighbor.

7 Q Uh-huh.

8 A And then I talked to John Price on the phone, which was
9 Saturday morning or something like that.

10 Q Okay.

11 A I don't remember the exact date.

12 Q Okay. Do you recall the first in-person meeting being on
13 November 22nd? If it would help, would it refresh your
14 recollection to look at the declaration that you --

15 A Sure.

16 Q Let me step back.

17 A What page?

18 Q I have to kind of go through a little spiel here. So as
19 you sit on the stand today, you can't recall the date of that
20 meeting?

21 A That meeting was sometime back.

22 Q Okay. But you can't recall the exact date?

23 A I cannot recall the exact date.

24 Q Would it refresh your recollection to look at the
25 declaration or affidavit that you gave to the NLRB on May 21st?

1 A It might.

2 Q And specifically, would it refresh your recollection if
3 you looked at page 17, line 2 of your declaration?

4 A Page 17, line 2.

5 Q 2 and 3.

6 A Yeah.

7 Q Okay. Now if you can put that document aside. Your first
8 meeting with the Union, in person, was on November 22nd, 2014?

9 A That's what it is in my affidavit.

10 Q Okay. Now you -- and I think you testified a little bit
11 about this on direct. You and I think Mr. -- was it Mr. Wizner
12 and Mr. Armstrong and Mr. Kingsby, correct? They --

13 A Yes.

14 Q -- attended the meeting? And the four of you laid out a
15 plan about how you're going to organize employees.

16 A Eric and I did.

17 Q Okay. Mr. Kingsby.

18 A Actually, Eric laid it out.

19 Q All right. Mr. Kingsby and Mr. Wizner were not there for
20 that part of the conversation?

21 A They were not.

22 Q Okay.

23 A Mr. Wizner, I believe, was in and out of the conference
24 room as we were talking.

25 Q You decided, at that point, that you just wanted to

1 organize the warehouse, right?

2 A We had talked about organizing the warehouse, yes.

3 Q Okay. But you decided only to organize the warehouse?

4 MS. DEMIROK: Object, relevance.

5 MR. DAWSON: Well, it's relevant. If I can explain.

6 There's been a question about the wage increases just before
7 the break. And so, what I'm leading up to is the point that
8 the Employer didn't really know who was subject to being
9 organized.

10 JUDGE WEDEKIND: But why would it make a difference --

11 MR. DAWSON: Well, it would go to --

12 JUDGE WEDEKIND: -- what he testified today?

13 MR. DAWSON: It would go to intent. If the Employer
14 didn't have any direct knowledge that will call, and so forth,
15 were subject to being organized, then the wage increase granted
16 to those employees -- because there's been no petition filed.
17 And there was no petition on file at that point. And so, our
18 argument is going to be that, you know, without a petition
19 pending, we can't, you know, just be stopped from granting any
20 wage increases.

21 JUDGE WEDEKIND: Did you grant the wage increase as well
22 or just the warehouse?

23 MR. DAWSON: Your Honor, I'm not sure about that. I'd
24 have to check.

25 JUDGE WEDEKIND: Well, his testimony today about what they

1 intended to do doesn't say anything about the Company's
2 knowledge or what they thought.

3 MR. DAWSON: All right. Well, let me -- I can -- let me
4 step back and ask a different question, Your Honor, if I may.

5 JUDGE WEDEKIND: Okay.

6 Q BY MR. DAWSON: Mr. Phipps, you never sent a letter or the
7 -- to your knowledge, the Union never sent a letter to Shamrock
8 saying they were going to try to bring in a union and here's
9 who we're organizing?

10 A I have no knowledge of that, whether they did or didn't.

11 Q Okay. And you know that you didn't?

12 A I did not, no.

13 Q Okay. Now I think you testified a little bit about the --
14 or actually, more than a little bit, about the tape recorder or
15 -- forgive me. Not tape recorder but digital recorder.

16 A Yes.

17 Q So there's no ejectable media in that; is that right? Is
18 it just --

19 A That is correct.

20 Q Okay. Did it have a microphone?

21 A It has a built in microphone on it, yes.

22 Q And does the microphone pick up things that you couldn't
23 hear with your own ear?

24 A Not that I'm aware of.

25 Q Did the Union give you the recorder?

1 A No, they did not.

2 Q Did they reimburse you for it?

3 A No, they did not.

4 Q So it was something that you had on your own?

5 A Yes.

6 Q All right. Did they know that you were recording
7 conversations?

8 A At some point during the campaign, I let them know that I
9 was recording for my protection.

10 Q Do you recall when that was?

11 A Not specifically, no.

12 Q So they didn't show you how to use the recorder?

13 A No, they did not.

14 Q They give you any guidance on legal issues?

15 A They had a question as to whether or not it was legal for
16 me to make recordings --

17 Q Uh-huh.

18 A -- under Arizona law.

19 Q Did they give you any guidance on that issue?

20 A No.

21 MS. DEMIROK: Object, relevance.

22 JUDGE WEDEKIND: What's the relevance?

23 MR. DAWSON: It is -- we believe it is relevant, Your
24 Honor, just in the sense that because, in addition to recording
25 conversations with supervisors, at least in some of the

1 recordings, we've heard there's recordings of, at least
2 arguably, concerted activity by other employees. So to the
3 extent that the Union authorized or ratified that activity,
4 there's at least an argument that they're reporting concerted
5 activity with no -- you know, with no reason. You know, in our
6 opinion, it could be an 8(b)(1) violation if you want to --

7 JUDGE WEDEKIND: It sounds interesting, but the purpose of
8 the hearing is not to investigate 8(b)(1) issues.

9 MR. DAWSON: Understood. Thank you, Your Honor.

10 JUDGE WEDEKIND: Okay. Sustained.

11 Q BY MR. DAWSON: I do have a couple more questions about
12 the recordings, Mr. Phipps, and on a different issue. How many
13 meetings did you record?

14 A Every meeting that I attended with management.

15 Q Okay. And we know -- I think January 28th, right there
16 were two?

17 A Yeah. From that point forward.

18 Q Okay. So January 28th, February 5th, February 24th, March
19 26th, March 31st, April 29th and May 5th, were those all your
20 recordings?

21 A I believe those are all mine.

22 Q Okay. Were there any other recordings besides those
23 dates?

24 A I did some recordings of myself.

25 Q Uh-huh.

1 A I did a recording of my announcement. I did a recording
2 of myself talking to people about the Union just in case
3 somebody came up and said something.

4 Q Sure.

5 A I think I've got a recording on there of a disciplinary
6 hearing that I was in --

7 Q And -- and that --

8 A -- on appeal.

9 Q -- meant you actually told the Employer that you were tape
10 recording the meeting?

11 A I pulled it out and showed it to him.

12 Q Okay.

13 A Laid it on the table.

14 Q Now, the -- so did you keep copies of the recordings that
15 you gave to the NLRB?

16 A The only copies that I would have had would have been in
17 my computer, which crashed about two weeks ago --

18 Q They'll did that, right?

19 A -- which is ugly. But I still have those in the digital
20 recorder.

21 Q All right. And did you give any copies to the Union of
22 those recordings?

23 A I gave copies of those to the Union. Mike Wizner, Eric
24 Anderson or Robert Kingsby to forward to David Rosenfeld's
25 office.

1 Q I see. Okay.

2 MR. DAWSON: Your Honor, the -- the Union has -- well, we
3 can address that off the record. I'm sorry.

4 JUDGE WEDEKIND: Well, maybe -- I mean to the extent you
5 think this is relevant to the subpoena issue, I think we need
6 to clarify exactly what he sent.

7 Q BY MR. DAWSON: Did you send all of the recordings to the
8 Union?

9 A No.

10 Q Oh, okay.

11 A Well, excuse me. Excuse me. Half my recordings went to
12 the Board agent --

13 Q Uh-huh.

14 A -- half my recordings went to the Union to forward to
15 David Rosenfeld.

16 Q I see.

17 JUDGE WEDEKIND: But which -- but which one?

18 Q BY MR. DAWSON: So, yeah, I was just going to ask you.
19 So -- so the recordings that the Union got copies of are not
20 the same as the recordings that the NLRB has copies of; is that
21 correct?

22 A No, that's not what I'm saying.

23 Q Okay. I'm sorry. Can you --

24 A They got -- I made copies of each one --

25 Q Oh, okay.

1 A -- that I gave to the Board agent. I gave one copy to the
2 Board agent, sent another copy to the Union to give to
3 Rosenfeld. The Board agent was asking for transcriptions.

4 Q I understand. Okay. So you made two full sets of copies?

5 A Yes, sir, I did.

6 Q Okay. One went to the Union and one went to the NLRB?

7 A Yes.

8 Q Okay. I understand. And those would include but would
9 not be limited to the recordings that you heard this morning
10 during your direct examination?

11 A That is correct.

12 Q All right. Did you tell your -- well, let me -- I'll
13 withdraw that.

14 Now, I think you mentioned on direct examination that --
15 that the group meetings didn't start until late January or
16 early February. Do you recall that testimony?

17 A I believe they were late January, yes.

18 Q Okay. But do you recall a meeting on December 12th where
19 several employees attended?

20 A I don't recall.

21 Q All right. Would it -- you don't recall -- as you -- as
22 you sit here today, you can't recall the date?

23 A I can't recall the date. We --

24 Q Okay.

25 A -- we held a lot of meetings.

1 Q Okay.

2 A I was involved in a lot of activity.

3 Q But let me ask you, just to make sure that it's -- it's
4 clear, your -- your earlier testimony was that anything before
5 late January would have been a one-on-one meeting?

6 MS. DEMIROK: Object. That mischaracterizes his testimony.
7 He didn't say anything --

8 MR. DAWSON: Well, I'm --

9 MS. DEMIROK: -- about that.

10 Q BY MR. DAWSON: If -- if I'm -- if I'm incorrect, please
11 clarify. But my understanding of your -- of your direct was
12 that there were no -- there were only one-on-one meetings prior
13 to let's say late January?

14 MS. DEMIROK: In fact, Your Honor, we never talked about
15 one-on-one meetings.

16 JUDGE WEDEKIND: Why don't you just ask him the question.

17 MR. DAWSON: Well, the -- the question -- and this is
18 purely just for -- for -- to impeach recollection essentially,
19 is there were -- there were group meetings in December and
20 early January.

21 JUDGE WEDEKIND: Well, this is always a problem, you know,
22 when you try to characterize prior testimony and everybody
23 disputes what was said.

24 Can you answer the question? Are you able to answer the
25 question?

1 THE WITNESS: To -- to the best of my knowledge, what I
2 testified to one on one is what I recall. And I'm not saying
3 that we didn't. Obviously he wouldn't be asking the question
4 if he didn't have something --

5 JUDGE WEDEKIND: Well --

6 THE WITNESS: -- said otherwise.

7 JUDGE WEDEKIND: Yeah.

8 Q BY MR. DAWSON: Well, and I think you've testified,
9 Mr. Phipps, that your -- your declaration is true, right?
10 Everything in your declaration is true?

11 A Everything that I recall, I -- I testified to it as I
12 recalled it.

13 Q Sure. But I'm asking a little bit different question.
14 So -- I know I was asking you about your direct testimony.

15 A Uh-huh.

16 Q Let's -- let's set that aside just for now. Everything in
17 your -- in your affidavit -- and I keep calling it a
18 declaration, which may be confusing. Everything in your
19 affidavit -- and -- and I'm pointing to Respondent Exhibit 1.
20 Everything in your affidavit was true to -- to the best of your
21 knowledge, when you -- when you gave it?

22 A To the best of knowledge, when I gave it, it was true,
23 yes.

24 Q And that -- that was given on May 21st, right?

25 A Well, that was given over a four-week period. Yes.

1 Q Okay. But it's dated May 21st? It's in front of you --

2 A It --

3 Q -- if you need to look at it.

4 A Yeah. I'm not -- I'm not arguing the point with you, I'm
5 just saying it was over a -- a four-week period. And it's
6 true, to the best of my knowledge.

7 Q All right. And -- and your recollection at the time of
8 the affidavit would have been clearer, I imagine, than it is
9 today?

10 A It should be.

11 Q Okay.

12 MR. DAWSON: I'll -- I'll move on, Your Honor.

13 Q BY MR. DAWSON: Now, if we could -- do you recall your
14 testimony regarding the -- the Union meeting on January 28th at
15 Denny's?

16 A The one where Art Manning up?

17 Q Correct. Yeah.

18 A Yes.

19 Q This is the one I think you said by where 17 crosses
20 Thomas; is that right?

21 A Yeah.

22 Q Okay.

23 A Uh-huh.

24 Q Art Manning actually was invited to attend that meeting,
25 wasn't he?

1 A We had given direction that captains were not to be
2 invited at this point.

3 Q Okay. But -- but --

4 A Whether --

5 Q Oh, sorry.

6 A -- whether or not he was invited by anybody, I have no
7 knowledge of that.

8 Q All right. And -- and assuming that -- if he was invited,
9 you wouldn't have any knowledge as to what Mr. Manning was told
10 about the purpose of the meeting?

11 A Again, if -- if I didn't know he was invited, I wouldn't
12 know why he was there.

13 Q That makes sense. And you walked out of the restaurant
14 and -- and you said hi to Art, right?

15 A Yeah.

16 Q Okay. And at that point someone else asked Mr. Manning if
17 he was in or out of the Union. Do you recall that?

18 A You're talking about the conversation between Mr. Manning
19 and the other employee?

20 Q Correct. Correct?

21 A And --

22 Q Do you recall the other employee asking Mr. Manning if he
23 was in or out of the Union?

24 A He could have. I don't -- off the top of my head right
25 now, I don't recall.

1 Q Okay. I think we had -- there had been some -- some
2 testimony on -- on your direct. And I apologize for jumping
3 around. I'm -- I'm trying to get through without, you know --

4 A Uh-huh.

5 Q -- repeating too much.

6 But -- but Shamrock, just generally, conducted a number of
7 meetings between let's say late January through April. Do you
8 recall your testimony on those meetings generally?

9 A Generally.

10 Q Okay. Some of the -- some of the meetings were to educate
11 employees about unions?

12 A If that's what you want to call it, yes.

13 Q Well -- okay. And some were for other reasons?

14 A Yes.

15 Q And you I think testified about a meeting on January 28th?
16 You had actually testified about two meetings on January 28th?

17 A Yes.

18 Q Let's talk about the first one. This is the one that Mark
19 Engdahl did most of the talking. Do you recall that?

20 A Yes.

21 Q All right. And he said that that meeting was because of
22 Teamster activity in Southern California?

23 A Yes.

24 Q So at that point you had no reason to believe that this
25 meeting had any -- anything to do with -- with your activity,

1 correct?

2 A It made me a little nervous.

3 Q Okay. But you had no reason to believe that Mark Engdahl
4 knew anything about what you were doing?

5 A Not directly, no, but I was nervous. Yes.

6 Q All right. And -- and you testified I believe that Mark
7 said at meeting he was committed to having no layoffs in the
8 summer. Do you recall that testimony?

9 A No, I don't.

10 Q Okay. You don't recall --

11 A It doesn't mean -- it doesn't mean it's not in the
12 affidavit. But I don't remember -- I don't recall it at this
13 point.

14 Q Okay. So he may have said it but you don't recall it at
15 this time?

16 A I don't recall it.

17 Q I understand. Now, do you recall Mr. Engdahl telling
18 employees at that meeting that they have the right to unionize?

19 A Yes, I do.

20 Q All right. And he also mentioned the open door policy?

21 A Yes, he did.

22 Q And he said that the Company couldn't make everything
23 perfect but they could listen to the employees?

24 A Yes.

25 Q All right. An employee asked about rented pallet jacks.

1 Do you recall that?

2 A Yes, I do.

3 Q And Mark said the employee can make an appointment with
4 him to come discuss the issue?

5 A Yes.

6 Q Okay. And that was kind of like you had an appointment
7 with Mark the prior September?

8 A Yes.

9 Q And you also attended, I think you mentioned, a round
10 table meeting on January 28th with Natalie Wright?

11 A Yes.

12 Q Do you recall that? And Natalie didn't mention anything
13 at all about the Union in her meeting or any union in her
14 meeting? Let me -- let me rephrase that so it's not confusing
15 on the record. Ms. Wright didn't mention anything at all about
16 any union at the meeting she conducted?

17 A That's incorrect.

18 Q That's incorrect. Do you recall Ms. -- Ms. Wright did say
19 anything about the --

20 A Yes.

21 Q -- union?

22 A I asked her the reason for the meeting with Mark Engdahl.
23 She said it was to educate our employees on the Union.

24 Q Okay. There was nothing else about the Union during that
25 meeting?

1 A No.

2 Q Was that "No?" I think I spoke over you. I apologize.

3 A I'm -- I'm sorry. I may be answering too fast.

4 Q Okay.

5 A No.

6 Q All right. And during that meeting, all Natalie said was
7 she would look into the complaints that were raised and see
8 what could be done to resolve them?

9 A That's what I recall.

10 Q And there was another meeting with -- with Natalie on
11 February 5th. Do you recall that meeting?

12 A That was with her and Ivan.

13 Q With her -- correct. Her and Ivan?

14 A Yes.

15 Q All right. And at that meeting you told Ivan and Natalie
16 that Shamrock treats its employees like shit?

17 A Yes, I did.

18 Q And they treat them like pieces of machinery?

19 A Yes, I did.

20 Q Another employee, Frank Sanchez, do you remember
21 Mr. Sanchez speaking out?

22 A Yeah.

23 Q And he asked if -- if Shamrock could provide the full HSA
24 contribution up front?

25 A Yes, he did.

1 Q And Natalie basically said, "That's not going to happen?"

2 A Yes.

3 Q All right. Matt Sheffer argued with Ivan about allowing
4 two employees to switch schedules. Do you recall that?

5 A Yes.

6 Q And Ivan said, "It's not going to happen?"

7 A Just a lot went on in that conversation. I'm trying to
8 remember what his final -- yeah, I believe finally he did say
9 that it wasn't going to happen.

10 Q There was another meeting on February 24th. Do you --

11 A Uh-huh.

12 Q -- recall that? Do you recall that meeting?

13 A That's the one with Ivan and -- and -- I want to call him
14 Ernie. That's what we call him. Brian Nicklen.

15 Q His -- his name is Brian but people call him Ernie?

16 A That's -- I believe that's his middle name.

17 Q Okay. I was -- not for any reason, but I was just going
18 to ask you if you knew why.

19 A I was there five years before I knew it was Brian.

20 Q Okay. All right. Now, in meeting, Ivan said he wasn't
21 for or against the Union, right?

22 A He did make that statement, yes.

23 Q Okay. And -- and he also said in summary that he wasn't
24 there to endorse or -- or discredit anything?

25 A He did say that.

1 Q Okay. Now, Ivan talked at that meeting about employees
2 who felt like they were being harassed or threatened to sign
3 cards. Do you remember him talking about that?

4 A I don't believe he used the word threatened. He --

5 Q But he did --

6 A -- use the word --

7 Q -- mention harass?

8 A -- being approached.

9 Q Okay. Did he mention the word harassed?

10 A I don't recall.

11 Q Or did he mention that employees said they wanted it to
12 stop?

13 A Yes.

14 Q Okay. He -- he mentioned that employees were asking him
15 questions about whether or not they'd lose their jobs if the
16 Union gets in?

17 A That's what he said.

18 Q All right. And at this point you knew at least one
19 individual who was told that he'd be the first one fired if the
20 Union got in and he hadn't signed the card?

21 A Yes. I --

22 Q And that was Mr. Manning?

23 A It was Art Manning.

24 Q Now, you told Art that's not the case, right?

25 A In that particular conversation, I corrected the employee

1 who told him and I told Art --

2 Q But there were --

3 A -- I said, "That's not correct."

4 Q Okay.

5 A "That doesn't happen."

6 Q But there were other cards signed outside of your
7 presence, right?

8 A There were.

9 Q So, as you sit here today, you don't have personal
10 knowledge as to whether anyone else was -- was threatened in a
11 similar manner?

12 A I cannot testify one way or the other to that.

13 Q Well, let's -- let's go to the meeting on April 29th.
14 Again, this was with Mark Engdahl?

15 A April 29th, yes.

16 Q Okay. I think you -- you testified about -- that -- that
17 Mr. Engdahl was -- was speaking about the Union and -- and what
18 he thought would happen or some of the probable consequences.
19 Do you recall your testimony on that?

20 A Yes.

21 Q But -- but he said multiple times through that meeting
22 that this was all in his opinion, correct?

23 A He said it was his opinion.

24 Q I'm -- I'm jumping backwards here, and I, again,
25 apologize. Going back to the town hall meeting where -- where

1 Mr. Wallace spoke up. That was on March 31st?

2 A Yes.

3 Q All right. And Bob Beake, I think you said, conducted
4 that meeting?

5 A That was the stated of Shamrock meeting.

6 Q Correct. Shamrock shut down production for that meeting,
7 correct?

8 A I believe they did, yes.

9 Q And that's a pretty unusual occurrence, isn't it?

10 A It is.

11 Q Okay. Now, Bob talked about the state of the Company,
12 what happened the last year, where it was going, et cetera?

13 A Uh-huh.

14 Q All right. He didn't promise any improvements in working
15 conditions?

16 A Not that I'm aware of.

17 Q Uh-huh. And didn't mention anything about the Union?

18 A No.

19 Q Now, I think you mentioned that after he finished the
20 presentation, he opened the floor up for -- for questions
21 from -- from employees?

22 A Yes, he did.

23 Q And Mr. Wallace was one of the employees that spoke out?

24 A Yes, he was.

25 Q But there were -- there were others as well?

1 A Yes.

2 Q Yes? Okay. And, to the best of your knowledge, Wallace
3 was not perceived as the leader of the organizing campaign, was
4 he?

5 MS. DEMIROK: Objection --

6 THE WITNESS: I --

7 MS. DEMIROK: -- just clarification of by who, perceived --

8 MR. DAWSON: By --

9 MS. DEMIROK: -- by who?

10 MR. DAWSON: By the other employees.

11 MS. DEMIROK: Objection. It then calls for speculation.

12 MR. DAWSON: I -- I asked to the best of his knowledge and
13 he was, you know, an organizer. So I think it's -- you know,
14 that -- that may go to -- go to weight. But it wouldn't go to
15 admissibility I don't believe, Your Honor.

16 JUDGE WEDEKIND: Yeah, I'm going to overrule the objection.
17 Go ahead.

18 Q BY MR. DAWSON: Mr. Phipps, to the best of your knowledge,
19 Wallace was not perceived as a leader of the organizing
20 campaign?

21 A I would contradict that. Wallace brought us three signed
22 cards and he was outspoken on the -- on the benefits of the
23 Union.

24 Q Can you turn with me to page 52 of your affidavit, May
25 21st affidavit? Lines 8 and 9. If you could let me know when

1 you're there.

2 "The discharged employees were not perceived as leaders of
3 the organizing campaign by other employees." Did I read that
4 correctly?

5 A I would refer you back to line 6. "Two of these employees
6 were card signers and actively attended Union meetings. Ivan
7 Vaivao told us the employees in several meetings" -- the
8 discharged employees I'm referring to there are the two that
9 were fired.

10 Q Okay. So that's -- that's not intended to refer to
11 Mr. Wallace?

12 A Not that I'm aware of, no.

13 Q Okay.

14 A That's how I read it --

15 Q Now, if --

16 A -- context. It refers to the other employees that were
17 fired.

18 Q If you look down to lines 11 and 12 --

19 A Uh-huh.

20 Q -- it says, "As far as the discharges employees being
21 willing to resume the campaign if they are reinstated, I think
22 Wallace, Scott and Perez would definitely resume the campaign."

23 A Okay.

24 Q So in that -- is it -- is it your testimony that in one
25 sense you're -- you're using discharged employees to refer to

1 people other than Mr. Wallace but in another -- he's included?

2 A It looks like in the context of the paragraph that I have
3 there, the discharged employees I'm referring to are Perez and
4 Scott. And then Wallace gets rolled into the three as -- as
5 resuming the campaign.

6 Q Now, I think you testified to the questions that
7 Mr. Wallace asked about the -- about getting the health -- the
8 old health insurance back, right?

9 A Yes.

10 Q And -- and whether the Union -- I'm sorry -- whether the
11 Company could fund the entire HSA?

12 A Yes.

13 Q And that -- meaning the deductible I assume, right?

14 A Well, the -- the Health Savings Account, it's not pro-
15 deductible, no.

16 Q Now, he -- he was asking if they could fund the full
17 deductible for the HSA?

18 A As I understand it, he was referring to the HSA account,
19 which would have been 3,000 for a family and 1,500 for an
20 individual.

21 Q Okay. Understood. Now, Mr. Beake did not appear to be
22 upset in any way after answering Wallace's questions, correct?

23 A Did not appear to be at all.

24 Q Okay. Now, I think you -- you mentioned you were told on
25 April 6th that Wallace had been let go?

1 A Yes.

2 Q You weren't -- you weren't present at the meeting
3 obviously where he was informed of his discharge?

4 A That's correct.

5 Q All right. So you don't have any personal knowledge of --
6 of what he was told regarding his discharge?

7 A Only what he shared with me.

8 Q All right. But you -- you did tell other employees that
9 Wallace was fired for asking a question?

10 A Yes.

11 Q All right. That wasn't based on personal knowledge?

12 A That was based on what Wallace told me. Yes.

13 Q All right. So -- so that's a "no;" it's not based on --

14 A That would be a no --

15 Q -- personal knowledge?

16 A -- yes.

17 Q Now, you're aware that there are -- there are other
18 employees who have been disrespectful to -- to management
19 without -- without being discharged, correct?

20 A That is correct.

21 Q Frank Hilton threw a box and cursed at a supervisor
22 without being discharged?

23 A Frank Hilton?

24 Q Frank Hilton.

25 A I don't know a Frank Hilton. I know a Bill Hilton.

1 Q If I can refer you to page 36 of your affidavit, maybe
2 I've -- I've said the name incorrectly. Page 36, lines 10 and
3 11. I'm sorry. I did. Bill Hilton. So you don't pronounce
4 Bill as Frank? Are you sure?

5 A Only if you're referring to Frank Shane.

6 Q I -- I believe that's the problem. So Bill Hilton was
7 allowed to throw boxes and can you say at Frank Shane? I'm
8 pronunciation's a little off.

9 A Bill Hilton had a reputation for it.

10 Q All right. He was not discharged at least on that
11 occasion?

12 A Bill Hilton was not discharged on several occasions.

13 Q You also cursed at a manager, Chris O'Brien, right?

14 A I don't --

15 Q During a tops meeting.

16 A Did I curse at him or just get real -- real tough with
17 him? Tough. I got -- I got down right nasty with him. I may
18 have cursed at him. That may have been --

19 Q Uh-huh.

20 A -- what I testified to. It was -- it was pretty ugly,
21 yeah.

22 Q You -- you also stood up during a town hall meeting in
23 front of Bob Beake, right?

24 A When?

25 Q Nine years ago about.

1 A Yeah.

2 Q And -- and you told Mr. Beake that Shamrock treats its
3 employees like red headed stepchildren?

4 A Yes, I did.

5 Q You also said that the Company didn't give a rat's ass
6 about its employees as long as the trucks rolled?

7 A That's right.

8 Q You told Ivan and Natalie on February 5th that Shamrock
9 treats its employees like shit?

10 A Yes, I did.

11 Q Matt Sheffer argued with Ivan about allowing two employees
12 to switch schedules?

13 A Yes, he did.

14 Q But you weren't discharged, right?

15 A I was not.

16 Q And Mr. Sheffer wasn't discharged?

17 A No, he wasn't.

18 Q All right. Just a -- a few more topics. And I appreciate
19 your patience.

20 Are you familiar with the complaint in this case?

21 A There's several complaints in the case.

22 Q I'm sorry. The -- I'm -- the complaint that the General
23 Counsel filed in this case.

24 A If you would share that with me, I could --

25 Q Sure. Yeah.

1 A -- I could talk to you --

2 Q Absolutely.

3 A -- about it.

4 Q I'm handing you what's already been marked and admitted
5 as -- as General Counsel Exhibit Number 1.

6 MR. DAWSON: May I approach, Your Honor.

7 JUDGE WEDEKIND: Sure. Yeah. That's fine.

8 Q BY MR. DAWSON: And turn to General Counsel Exhibit 1(g).
9 Let's see if I can find it. Nope, that's not it. Sorry.

10 There we go. Now, if you could keep this with you because
11 I'm going to ask you a couple -- a couple of questions about
12 it.

13 A 1(g)?

14 Q I'm sorry. 1(g) was the -- the exhibit number. Can you
15 look at -- at page 8 of the complaint?

16 A Okay.

17 Q And -- and you see the allegation that -- that has an F in
18 parentheses?

19 A Okay.

20 Q If that allegation, Zack White is alleged to have
21 interrogated employees remembering their Union membership,
22 activities and sympathies of other employees? Did I say that
23 correctly?

24 A Uh-huh.

25 Q And he's also alleged to have created impression of

1 surveillance by telling employees that there were rumors of a
2 union arguing campaign in the warehouse?

3 A Uh-huh.

4 Q The complaint says employees, but that was you and Zack --

5 A That was --

6 Q -- is that right?

7 A That was me and Zack.

8 Q Okay. And that was on January 25th?

9 A That was on January 25th.

10 Q Okay. At this point, January 25th, the word was spreading
11 like wild fire about the arguing campaign in the warehouse,
12 right?

13 A Yeah.

14 Q Okay. The employees were all talking about it away from
15 the supervisors, right?

16 A Uh-huh.

17 Q All right.

18 JUDGE WEDEKIND: Yes or no?

19 UNIDENTIFIED SPEAKER: Is that a yes or no?

20 THE WITNESS: Yes. I'm sorry, Your Honor.

21 MR. DAWSON: Yeah. That's -- I'm sorry. I'm -- I'm
22 messing that up as well.

23 THE WITNESS: I'm getting into the conversation.

24 JUDGE WEDEKIND: No. That --

25 THE WITNESS: I apologize.

1 JUDGE WEDEKIND: -- happens to everybody. Don't worry
2 about it.

3 Q BY MR. DAWSON: Now again, at this -- at this point in
4 time, you'd already had several conversations with Art Manning
5 about the Union, right?

6 A I don't recall if Art and I had already talked at this
7 point or not. I don't believe we had.

8 Q Okay.

9 A We had --

10 Q But you --

11 A We had talked about management. We had talked about
12 management's lack of response to employee complaints. We had
13 talked about management's lack of response to employee ideas.

14 Q You -- you and Art kind of had shared conversations and
15 views about these issues; is that right?

16 A We had -- yeah, we had shared views --

17 Q Okay.

18 A -- comments.

19 Q Now, if -- if I can refer to you page 25 -- and I'm sorry.
20 I know you have a couple of -- of documents up there. But if
21 you could look at page 25 of your affidavit, your May 21st
22 affidavit, which is Respondent's Exhibit 1.

23 MS. DEMIROK: What page?

24 MR. DAWSON: Page 25.

25 Q BY MR. DAWSON: And just -- just kind of skimming the top,

1 this is referring to your -- the meeting on January 28th where
2 Art was outside of Denny's?

3 A Yeah.

4 Q And if you can look -- so January 28th, this would have
5 been three days later than the conversation with Zack, right?

6 A Yeah.

7 Q If you can look at lines 13 and 14, "I did not explain
8 further but I had already had several conversations with Art
9 about the Union and he knew how the process worked." Did I
10 read that correctly?

11 A Let me read in context here.

12 That's correct.

13 Q Okay. So on January -- by January 28th, you'd already had
14 several conversations with Art about the Union, right?

15 A We had had general conversations about a union inside
16 Shamrock due to the California campaign that was going on.

17 Q Okay. And the conversation with Zack was only three days
18 before that?

19 A There's a difference in the two.

20 Q Of three days?

21 A No. There's a difference in the two men.

22 Q No. I understand. But Zack and Art are both captains,
23 right?

24 A They are.

25 Q All right. Now, on direct I think you testified that Zack

1 asked you if you knew anything about union organizing in the
2 warehouse?

3 A He did.

4 Q Okay. But -- but Jack -- Zack actually just said there
5 were rumors of organizing in the warehouse, correct?

6 A He asked me if I knew anything about it.

7 Q Okay. Let's look at page 20 of your affidavit. That line
8 12 -- I'm sorry line 10 through 12. If you can let me know
9 when you're there. "He meaning Zack told me that the Teamsters
10 were standing at the gates and handing signature cards to the
11 drivers. White told me there were rumors in the warehouse
12 about an organizing campaign. I asked him if he knew anything
13 about it because I didn't want the Teamsters in the warehouse."
14 Did I read that correctly?

15 A No. The transportation manager told me that the Teamsters
16 were standing at the gates and handing signature cards to
17 drivers.

18 Q I'm sorry. I apologize. So -- so -- I think I started a
19 little bit too early. But for -- for -- on line 11 and 12, it
20 says, "White told me there were rumors in the warehouse about
21 an organizing campaign and I asked him if he knew anything
22 about it." Did I read that correctly?

23 A I asked him if he knew anything about it because I didn't
24 want the Teamsters in the warehouse, which is what I said to
25 him.

1 Q Okay. But Zack sustained said he -- that there were
2 rumors of an organizing campaign?

3 A In the warehouse, yes.

4 Q In the warehouse. But he didn't ask you how you felt
5 about it --

6 A He did not ask --

7 Q -- or what you knew about it? Am I correct? Didn't you,
8 in fact, ask Zack what he knew about the campaign?

9 A I did --

10 Q Okay.

11 A -- yes.

12 Q And Zack responded -- if you look down at line 13 -- no,
13 he didn't know anything?

14 A But he had heard that whoever was involved was really
15 close to getting the Union in.

16 Q Okay. But he know anything about -- he didn't say, "I
17 know who's behind it, I know who's doing anything like that,"
18 correct?

19 A Correct.

20 Q All right. If you can turn back to the complaint. And
21 sorry for jumping around here again. But it's -- it's the
22 document with the -- on the spindle thing there.

23 A Uh-huh.

24 Q And -- and if you can look with me at page 12.

25 A Page 12. Okay. Paragraph 13 at the top of the page.

1 Q Right. Correct. If you can go just --

2 A Okay.

3 Q -- just below that, do you see there's an S in
4 parentheses?

5 MS. DEMIROK: Your Honor, I'm going to object to
6 foundation. I don't know if we've learned how he's -- if
7 Mr. Phipps is familiar or how familiar he is with the complaint
8 and how that might be -- he's certainly not the one who drafted
9 the complaint.

10 MR. DAWSON: May I -- may I respond, Your Honor?

11 JUDGE WEDEKIND: Sure.

12 MR. DAWSON: It's -- it's purely for time frame reference,
13 not -- not for any other purpose. I was just pegging the
14 conversation with -- with Zack White on January 25th.

15 JUDGE WEDEKIND: I think it's -- I don't think it's harmful
16 at this point. If you think that someone mischaracterizes the
17 complaint, let us know.

18 MS. DEMIROK: Okay.

19 Q BY MR. DAWSON: So on page 12 of the complaint, do you see
20 the little S in parentheses? Just below where it says
21 paragraph --

22 A Yes.

23 Q -- 13? Okay. This is an allegation concerning Art
24 Manning.

25 A Okay.

1 Q And this is from April 27th, correct?

2 A That's what it says.

3 Q All right. And I think on direct you testified that you
4 stood up in the break room on April 26th to announce that --
5 that, you know, essentially you were the guy to talk to about
6 the union?

7 A Yeah.

8 Q Okay. And you repeated that announcement on April 27th?

9 A Yes, I did.

10 Q All right. Art approached you after you made the
11 announcement in the break room. Do you recall your testimony
12 on that?

13 A Yes. Aisle 17.

14 Q Okay. He asked you whether what he had heard was true?

15 A Correct.

16 Q You told him that you couldn't talk to him about the union
17 on the floor, right?

18 A Correct.

19 Q But you told him if he wanted to talk, you would talk to
20 him at break or lunch?

21 A Or after work.

22 Q Or after work?

23 A Yeah.

24 Q But you offered to talk to Mr. Manning about the union?

25 A Yes.

1 Q And I -- and we don't necessarily have to refer to the
2 complaint. I believe you testified about an interaction with
3 Joe Remblance on direct examination. Do you recall your
4 testimony?

5 A That would be in aisle 49.

6 Q Aisle 49. And this is on April 29th?

7 A Uh-huh.

8 Q And you weren't in the break room, right, you were on the
9 aisle?

10 A I was on break on the aisle, yes.

11 Q Okay. But you -- you were on break but you weren't in the
12 break room?

13 A Correct.

14 Q Okay. And you were talking with Nile Bose?

15 A Nile Vose, with a V.

16 Q Vose. Oh, okay. Thanks. Now, there was no reason that
17 Remblance would have known that you were on break when he
18 approached you, right?

19 A Yes, he would.

20 Q Did you have a sign that said you were on break or --

21 A That's normal break time for us in the warehouse --

22 Q In the --

23 A -- 1:00.

24 Q Okay. But in the aisles?

25 A You can take a break anywhere you want to in that

1 warehouse.

2 Q Okay. All right. The entire conversation with Joe, how
3 long did occur?

4 A Three, four minutes.

5 Q Three, four minutes. Okay. So he came, asked you if you
6 were on break, engage the in small talk, turned around to
7 leave, asked you how much break time you had remaining and then
8 left. And that occurred in the span of three to four minutes?

9 A Yes.

10 Q All right. Do you still have General Counsel Exhibit 14
11 in front of you?

12 A The letter?

13 Q The letter from Mr. McClelland?

14 A Yes, I do.

15 Q And if you need to take a look at the letter, you know,
16 please let me know. But -- but there's nothing in the letter
17 specifically mentioning anything about union activity, correct?

18 A Correct.

19 Q You just assumed that it was aimed at union activities?

20 A Yes.

21 Q Okay. Now, going to the allegations regarding Karen
22 Garzon, the fliers that were left on -- on the break room
23 counter, do you recall your testimony on that?

24 A Yes.

25 Q If I could --

1 MR. DAWSON: Can I start that back up?

2 MS. DEMIROK: It will have to be --

3 MR. DAWSON: Well, it will have --

4 MS. DEMIROK: She'll have to log?

5 MR. DAWSON: -- warm up? Oh, okay. All right.

6 Q BY MR. DAWSON: Let me -- let me just -- as that's warming
7 up, let me show you what I'm going to mark as Respondent's
8 Exhibits 2 and 3.

9 **(Respondent Exhibit Numbers 2 and 3 Marked for Identification)**

10 Q BY MR. DAWSON: Mr. Phipps, do you have Exhibit 2 in front
11 of you?

12 A Uh-huh.

13 JUDGE WEDEKIND: Yes or no?

14 THE WITNESS: Yes. I'm sorry. Yes, I do.

15 JUDGE WEDEKIND: Okay.

16 MR. DAWSON: Yeah. We're both not --

17 THE WITNESS: Bad habit.

18 MR. DAWSON: -- not doing very well.

19 THE WITNESS: Sorry about that.

20 JUDGE WEDEKIND: Habit, yeah.

21 Q BY MR. DAWSON: That's a picture of the break room
22 counter?

23 A That's the information counter, yes.

24 Q All right. I'll hand you what I've marked as Respondent's
25 Exhibit 3. Respondent's Exhibit 3 is -- is I guess for -- lack

1 of good English, a closer upper of the -- the counter; is that
2 right?

3 A Yeah. That's after we started laying fliers up there.

4 Q Okay. And -- and that's says, "Introducing the Shamrock
5 Associate Services Center?" And I'm looking at Respondent's
6 Exhibit 3, the green sort of banner.

7 A Okay.

8 Q Did I read that correctly?

9 A Okay.

10 Q All right. Now, I think you mentioned on direct that
11 there's -- there's Susan G. Komen and some other items -- Susan
12 G. Komen fliers and some other items on the counter. But
13 typically there's just blood pressure and living healthy
14 information; isn't that true?

15 A No.

16 Q Can you turn with me to page 3 -- actually, page 2 of your
17 affidavit -- oh, no, you can't because I -- I'm going to hand
18 you what I marked -- what I'll mark as Respondent's Exhibit 4.

19 **(Respondent Exhibit Number 4 Marked for Identification)**

20 Q BY MR. DAWSON: I think -- I believe as I'm handing
21 Respondent's Exhibit 4, I think you testified that you had
22 given two or three declarations to the -- to the Board, right?

23 A Uh-huh.

24 Q One of those affidavits was on May 28th or dated May 28th?

25 A Yes.

1 Q Okay. And what I've just handed you is a copy of that
2 affidavit?

3 A Okay.

4 Q Well, is that -- is that right?

5 A It appears to be, yes.

6 Q Again, your, you know, whole truth, nothing but the
7 truth --

8 A Yes.

9 Q -- so help you God, et cetera?

10 A Yes.

11 Q Okay. So this was under oath?

12 A Yes.

13 Q And you did, in fact, tell the whole truth and nothing but
14 the truth?

15 A To the best of my knowledge, I did, yes.

16 Q All right. If you can turn with me to page 2, at the
17 bottom, line 28, and it will run onto the next page, "Other
18 literature the employer displayed on those counters were blood
19 drive standing plaques and a brochure about living healthy."
20 Did I read that correctly?

21 A Yep.

22 Q There's nothing -- no mention about Susan G. Komen or
23 anything else?

24 A No.

25 Q Okay. And -- and those items you believe were left there

1 by people from the Shamrock benefits department?

2 A Uh-huh.

3 JUDGE WEDEKIND: Yes or no?

4 THE WITNESS: Yes. I'm sorry.

5 Q BY MR. DAWSON: I'll try to remind you as well. I'm
6 sorry.

7 A I just need to speak up.

8 Q Yeah. Now, do you recall your testimony about handing out
9 fliers in the break room on May 25th?

10 A May 25th? Yeah.

11 Q All right. After you -- you handed the fliers out, you
12 were talking to employees when Joe Remblance came in?

13 A Yes, I was.

14 Q Okay. I think you accused him of surveillance and told
15 him to shut up and go away?

16 A Yes, I did.

17 Q Okay. And when you turned to leave the break room, you
18 saw Karen Garzon sitting with two employees, right?

19 A She was not sitting, she was standing and --

20 Q She was standing?

21 A -- passing out fliers.

22 Q Okay. So Ms. Garzon was standing? She was -- your
23 testimony is she was not sitting with these employees?

24 A She was not sitting.

25 Q Okay. Ms. Garzon is a native Spanish speaker. Are you

1 aware of --

2 A Yes, she is.

3 Q Okay. The employees that -- that she was with are also
4 native Spanish speakers?

5 A Yes.

6 Q All right. Now, you -- you returned at the point that she
7 first interacted with them; is that correct?

8 A Yes.

9 Q All right. So you didn't see or hear the conversation
10 that they had?

11 A I have no knowledge that they had a conversation.

12 Q Okay. That's fair. You don't -- you don't know if they
13 had a conversation or not?

14 A Hmm?

15 Q Is that -- that's correct?

16 A That is correct.

17 Q "Yes?" Okay. All right. So if -- if they had asked for
18 Ms. Garzon to interpret those fliers, you wouldn't have any
19 knowledge of that?

20 A Those fliers had Spanish on the back of them already.

21 Q But they -- you don't know that they saw that, is what I'm
22 asking.

23 A I flipped them over so they could.

24 Q Okay. But, again, to the best of your knowledge, you
25 don't know whether there was a conversation or not between the

1 two -- or between the three of them, let's say?

2 A I have no idea.

3 Q Okay.

4 MR. DAWSON: Your Honor, if I could just take two --

5 JUDGE WEDEKIND: Sure.

6 MR. DAWSON: -- two minutes -- or a minute.

7 JUDGE WEDEKIND: Off the record.

8 (Off the record at 2:36 p.m.)

9 MR. DAWSON: Do I just push the button?

10 MS. OVIEDO: Just don't trip over anything.

11 MR. DAWSON: Oh.

12 MS. OVIEDO: No, no, no.

13 MR. DAWSON: Oh, okay. Oh. Oh, yeah, yeah, yeah. Okay.

14 Okay. I'm sorry. Let me see if I can -- can you see the --

15 the screen okay?

16 THE WITNESS: Yeah, I think so. Yeah.

17 MR. DAWSON: Okay.

18 MS. OVIEDO: The mouse the right there.

19 MS. DEMIROK: I don't think the mouse --

20 MR. DAWSON: Oh, oh, okay. There we go.

21 MS. DEMIROK: I don't think the mouse is working.

22 MR. DAWSON: It's not. Okay. All right.

23 MS. OVIEDO: Okay. Sorry.

24 MR. DAWSON: Yeah. Let's see -- all right. Are you ready?

25 I'm going to hit play. And it paused pretty quickly once I did

1 hit it, so -- all right. Here we go.

2 Q BY MR. DAWSON: All right. Now, that's Ms. Garzon. And
3 let me see if I can back it up just a little bit. Just to make
4 sure that the -- she's picking up yellow fliers, isn't she?

5 A They look like yellow fliers now, yes.

6 Q They look like yellow fliers. But your testimony was that
7 you put white fliers on the --

8 A And I said --

9 Q -- counter?

10 A -- those look like white fliers that we had put out. We
11 had put all kinds of -- of different colors.

12 Q Okay. Now, as we look at this recording here -- and --
13 and I know we are -- the angle is -- is, you know, so you can't
14 really see it. But there didn't appear to be anything -- and
15 I'm going to point -- there doesn't appear to be anything else
16 to the counter, does there?

17 A As far as what?

18 Q Fliers or anything.

19 A No. There are other things on the counter. You can see
20 them to the left. You can see those -- either that or I'm
21 getting a lot of glare from here.

22 Q Okay. Okay. So -- so -- but you can't really tell what
23 -- what these are; is that -- is that right?

24 A What those are?

25 Q Yeah. I'm -- see the --

1 A That's the edge of the counter.

2 Q No. I'm just up a little bit. That right there.

3 A There's --

4 Q Is that what you're saying --

5 A There's stuff on the counter. I can see that.

6 Q All right.

7 A It's not silver --

8 Q That may be the --

9 A -- like the rest of it.

10 Q That may be -- and I'm -- I know I'm -- you can't see from
11 this -- from this standpoint. But that looks to be about the
12 size of the -- the healthcare poster that we looked at, right?

13 A Yeah. The one they put up after we put the fliers up
14 there? Yeah.

15 Q Okay. There's nothing over here?

16 A Nope.

17 Q Okay.

18 JUDGE WEDEKIND: I'm a little confused. You're saying they
19 put the poster that's on Respondent Exhibit 3 up after you put
20 the fliers up?

21 THE WITNESS: We started -- Your Honor, we started putting
22 fliers out on this counter probably a month before this poster
23 went up.

24 JUDGE WEDEKIND: Okay.

25 MR. DAWSON: I'm sorry, Your Honor. If I could just have a

1 brief --

2 JUDGE WEDEKIND: Sure.

3 MR. DAWSON: All right.

4 Q BY MR. DAWSON: Mr. Phipps, just one more question. And I
5 think -- and I think you testified to this on direct, but --
6 but just to make sure that the record's clear, you didn't start
7 leafletting until late May; is that right?

8 A I believe it was late May when we start leafletting.

9 Q Okay. And -- and you wouldn't have left any fliers on the
10 counter before late May?

11 A No, we wouldn't have.

12 MR. DAWSON: Nothing further, Your Honor.

13 JUDGE WEDEKIND: Redirect?

14 MS. DEMIROK: Yeah. I have a few questions.

15 **REDIRECT EXAMINATION**

16 Q BY MS. DEMIROK: Mr. Phipps before January 28th, 2015,
17 during the town hall meeting, do you recall when -- the last
18 time you were reminded about Shamrock's open-door policy?

19 A No, I can't.

20 Q I want to take you back to the town hall meeting. I think
21 it was either in 2009, nine years ago. I can't -- can't recall
22 what the testimony was on that. But it was a meeting where you
23 stood up and -- I think there was testimony that you said some
24 harsh things. Was there a union organizing campaign going on
25 at that time?

1 A There was not.

2 Q And during this February 5th, 2015 meeting, you testified
3 that you said the word shit?

4 A Yes, ma'am.

5 Q Were you disciplined for saying that?

6 A I was not.

7 Q Now, there was also some testimony about what Mr. Vaivao
8 said during the February 5th meeting and also on the February
9 24th meeting. Did he say other things that you weren't asked
10 about?

11 A Yes, he did.

12 Q And regarding the meeting on April 29th, 2015, I believe
13 you testified to some things that Mr. Engdahl had said during
14 that meeting. Did Mr. Engdahl say other things that you didn't
15 discuss in your testimony?

16 A That is correct.

17 Q And all of that would be in the recordings, right?

18 A They would be.

19 Q Now, we -- we met and prepared and talked about your
20 testimony, you talked about that. Over the weekend where -- in
21 which room did we meet?

22 A We met -- we started in here and then we moved to the
23 other -- other courtroom.

24 Q And why did we move to the other one?

25 A Because of the material that was in this one.

1 Q Can you explain that more?

2 A Well, there was -- as we started to get set up and start
3 to work in here, I started noticing there was a lot of material
4 in here related to the hearing and what was going on. I didn't
5 want that to taint my testimony or give the appearance that it
6 might have.

7 Q And did you see anything that was marked as an exhibit
8 while we were discussing --

9 A The only thing that --

10 Q -- your testimony?

11 A -- that started to key me was the -- was this, the letter
12 that's sitting here with the stack of paper.

13 Q And did I show that to you?

14 A We had talked about it and we had discussed it. But this
15 I recognized was something from the hearing because of the --
16 the square that's on here.

17 Q And when you say we had discussed that letter, when did we
18 discuss that letter?

19 A We discussed that as we were preparing testimony.

20 Q But when?

21 A We discussed that a week or so ago.

22 Q Did I show you a copy of that letter --

23 A Yes --

24 Q -- over the --

25 A -- you did.

1 Q Listen, did I show --

2 A I'm --

3 Q -- you a copy of that letter over the weekend, an actual
4 copy of that letter?

5 A No, you did not.

6 Q You're the one who provided that letter to the -- to the
7 Board, right?

8 A Yes, I did.

9 Q So you've seen it before?

10 A Yes, I have.

11 MS. DEMIROK: I have no further questions.

12 If I may, Your Honor, have a moment?

13 JUDGE WEDEKIND: Sure.

14 MS. DEMIROK: Just a couple more questions, Your Honor.

15 JUDGE WEDEKIND: Sure.

16 Q BY MS. DEMIROK: As -- as Respondent's counsel pointed
17 out, you testified earlier that the -- that the flier you had
18 passed out that day was white, but you also testified that you
19 handed out fliers of all different kinds of colors?

20 A Yes, ma'am.

21 MS. DEMIROK: Can I approach?

22 JUDGE WEDEKIND: Yes.

23 Q BY MS. DEMIROK: I'm handing you what's been marked as GC
24 Exhibit 25. Do you recognize what this is a picture of?

25 A Yes, I do.

1 Q Can you tell us what's -- what's in that picture?

2 A This is our flier on discipline. It's next to the little
3 handout they had on -- I believe that was on the healthcare.

4 Q And when you say, "it's our flier," can you -- can you
5 point for us and show us what you -- what flier you're
6 referring to and can you also explain whose flier?

7 A This is the flier on discipline. We were -- this is one
8 that we put together, the union committee, talking about the
9 difference between the Company's step discipline policy and
10 what the handbook actually says it is.

11 Q And is that an accurate representation of the color of the
12 flier -- that particular flier?

13 A Yes, it is.

14 Q And what color is that?

15 A That's yellow.

16 Q And as Respondent's counsel pointed out, the flier that
17 Ms. Garzon has picked up on in this is what color?

18 A Yellow.

19 Q And, finally, when you were -- well, when you had
20 testified about other things that you've seen on the
21 information table, were you testifying to specific dates that
22 you saw those things on the information table, or could you
23 explain to us when -- when you may have seen those things that
24 you testified about?

25 A That particular counter gets things put on it all the

1 time. I've seen hula hoops on there. I've got pictures of
2 that. Sometimes drinks that put on there and milk crates.
3 Chips are put on there. I've seen water bottles on there. As
4 I mentioned, the Susan G. Komen foundation stuff, the mudder
5 runs. It's an information counter or has been an information
6 counter for the employees.

7 Q And when did you see the Susan G. Komen fliers on there?

8 A I couldn't give you an exact date. That -- that has
9 always been where stuff like that has been left since the --
10 the break room was remodeled a few years back.

11 Q And what about the mudder run, do you know when you saw
12 that stuff on there?

13 A In the last year, year and a half.

14 JUDGE WEDEKIND: Is that something everybody in Phoenix
15 knows what it is? What's a mudder run?

16 MS. DEMIROK: A mudder run? I'm -- I'm guessing it's one
17 of those relay or like races -- oh, I'm sorry. Maybe I
18 shouldn't say this. So sorry.

19 JUDGE WEDEKIND: I was wondering. What's a mudder run?

20 THE WITNESS: A mudder run is a multi-mile event. You can
21 enter as teams or individuals. They do it as a health thing.
22 But you run and you go through all these obstacles, including
23 mud pits, over walls, through things. These guys have
24 described crazy stuff.

25 JUDGE WEDEKIND: Right. Thanks.

1 Q BY MS. DEMIROK: Now, Mr. Phipps, before you started
2 passing out fliers, how often, if at all, would you see
3 Ms. Garzon picking things up in the break room?

4 A Not ever.

5 MS. DEMIROK: Your Honor, at this time General Counsel
6 would move to admit what's been marked as GC Exhibit Number 25.

7 MR. DAWSON: No -- no objection, Your Honor.

8 JUDGE WEDEKIND: It's received.

9 **(General Counsel Exhibit Number 25 Received into Evidence)**

10 MS. DEMIROK: And we have no further questions for this
11 witness.

12 JUDGE WEDEKIND: How about 1 through 4?

13 MR. DAWSON: Yeah, I was going to ask at the -- at the end.
14 If I -- can I just have a few more questions, Your Honor?

15 JUDGE WEDEKIND: Sure. Yeah.

16 **RE CROSS-EXAMINATION**

17 Q BY MR. DAWSON: Mr. Phipps, the mudder run is sponsored by
18 the Company wellness program, isn't it?

19 A It is one of the things they promote, yes.

20 Q It's -- but it's actually sponsored, not just promoted,
21 right?

22 A I don't know if they sponsor the mudder run or not.

23 Q Okay.

24 A I know it's promoted.

25 Q Okay. And then real quick -- and I apologize --

1 MR. DAWSON: And -- and, Your Honor, if I may, I had a few
2 follow-up questions about the -- the recordings.

3 Q BY MR. DAWSON: You mentioned Mr. Lerma and another
4 employee -- I -- I didn't catch the name -- that also tape
5 record -- or that also recorded audio?

6 A Gilbert Jaquez.

7 Q Okay. Do you know how many recordings they made?

8 A I don't know how many they made. I can only testify to
9 what I received.

10 Q And how many did you receive from each of them?

11 A From Mr. Lerma, I received a flash drive from Mr. Jaquez,
12 I received one recording.

13 Q Do you know the date on Mr. Jaquez's request?

14 A I do not.

15 Q Is it one of the ones that you listened to this morning?

16 A No, it was not.

17 Q Okay. And were these all included in the set of copies
18 that you gave to the Union?

19 A No, they were not.

20 Q Those --

21 A Gilbert's was not, for clarification.

22 Q Okay.

23 A Mr. Lerma's was, and again, that was supposed to go to Mr.
24 Rosenfeld.

25 Q Okay. And Mr. Lerma had how many recordings?

1 A As far as I know, one.

2 MR. DAWSON: Just one? Okay. Nothing further, Your
3 Honor.

4 JUDGE WEDEKIND: 1 through 4?

5 MR. DAWSON: Respondent moves for admission of
6 Respondent's Exhibits 1 through 4.

7 MS. DEMIROK: Your Honor, I'm going to object to
8 Respondent's Exhibits 1 and 4 on a couple different grounds.
9 One, there's a lot of irrelevant information in the statement,
10 so I would object on relevance grounds, and also I would object
11 that these are hearsay statements and he's already testified to
12 what he knows about these certain events -- this being offered
13 for substantive purposes, I don't see -- I would object on
14 hearsay. I'll leave it at that.

15 JUDGE WEDEKIND: Well, you should cross-examine about
16 inconsistencies. I'm not sure if the record is going to be
17 perfectly clear.

18 MR. DAWSON: Your Honor, if I may, it is a sworn statement
19 by someone who's testifying, as Your Honor pointed out earlier,
20 you know, if he does not apply the hearsay exclusion hard and
21 fast, it is something that --

22 JUDGE WEDEKIND: Well, let's just stop right there. What
23 are you offering it for?

24 MR. DAWSON: I am offering it some cases for the truth of
25 the matter, sort of. I'm not -- I would not be offering it for

1 anything that was not asked on cross. Much like the
2 transcripts of the audio recordings. There's a lot of items in
3 there that General Counsel is not alleging is violations.
4 Those are nonetheless coming in. This would be the same thing.
5 We would not be offering on anything that I didn't examine the
6 witness on, and for example, I believe the witness agreed that
7 the testimony concerning Zack White and what Zack White asked
8 him in particular, ultimately was described accurately in the
9 affidavit.

10 MS. DEMIROK: Your Honor, if I may --

11 MR. DAWSON: To the extent that he testified today, what
12 he said then is correct, you know, sure. And yes, it was
13 sworn, it's a sworn statement.

14 MS. DEMIROK: It was sworn. It --

15 MR. DAWSON: Prior statement.

16 MS. DEMIROK: There are a lot of personal -- it's very
17 lengthy and there are a lot of things in there that it's just
18 going to muddy up the record. But also, as far as these
19 previous meetings that he's testified to today, again, we did
20 subpoena documents, you know, asking for records showing any
21 other type of meetings for the entire period of the subpoena
22 date, which would include these meetings. Again, we didn't get
23 any response documents to those, so insofar as they're going to
24 use this to show their Defense or any type of related Defense,
25 you know, I would also object on those grounds.

1 JUDGE WEDEKIND: But he just said, he's only going to use
2 it for things that he covered on cross.

3 MS. DEMIROK: And he went outside the scope on cross, as
4 far as --

5 JUDGE WEDEKIND: With respect to --

6 MS. DEMIROK: -- those other meetings prior to January
7 28th. And I objected to that, but they -- on relevance grounds
8 again, and as far as out of scope, but they, I believe they
9 argued that they wanted to put that in to show that the
10 meetings they held on January 28th and later were, at least how
11 I took it, are similar to meetings that they held in the past,
12 which would go to one of their Defenses.

13 MR. DAWSON: May I respond, Your Honor?

14 JUDGE WEDEKIND: Uh-huh.

15 MR. DAWSON: To the best of my knowledge, and you know,
16 you can question how good that is, but my recollection is the
17 only prior meeting that I asked Mr. Phipps about from the
18 declaration was just the purpose of the meeting in I want to
19 say late May or early June conducted by Mr. Kropman and Mr.
20 Vaivao, which, you know, honestly, the purpose of the meeting
21 is what it is. I don't believe that that was particularly
22 critical, but I believe, in regard to all of the other
23 meetings, Mr. Phipps testified based on recollection and not
24 based on the affidavit.

25 MS. DEMIROK: But the affidavit does contain them.

1 MR. DAWSON: Yeah, it does contain it, but again, we would
2 not be using the affidavit, we would be using Mr. Phipps
3 testimony.

4 JUDGE WEDEKIND: Now, you haven't really given me a
5 compelling reason to exclude it in my view, given everything
6 that Counsel said. You didn't have any objection to his
7 testimony about prior meetings when he was giving the
8 testimony.

9 MS. DEMIROK: I did.

10 JUDGE WEDEKIND: You did?

11 MS. DEMIROK: Yeah.

12 JUDGE WEDEKIND: On what grounds?

13 MS. DEMIROK: On outside of scope and also it was
14 irrelevant.

15 JUDGE WEDEKIND: Oh, that, I see. Okay. Right, right,
16 right. I remember an outside the scope.

17 And the reasons for your asking the questions, you said at
18 the time?

19 MR. DAWSON: To show that there's been an ongoing --

20 JUDGE WEDEKIND: Right, an open-door policy.

21 MR. DAWSON: Yeah, the open-door policy.

22 JUDGE WEDEKIND: The open-door policy. Okay.

23 MR. DAWSON: Correct.

24 JUDGE WEDEKIND: And so you're saying that it's irrelevant
25 that they had an open-door policy?

1 MS. DEMIROK: No, what I'm saying is if they want to enter
2 this for substantive evidence of the fact that they have always
3 had an open-door policy, we've subpoenaed records that weren't
4 produced, and if that's going to be their Defense, I think that
5 they shouldn't be able to --

6 JUDGE WEDEKIND: Well, that's what I'm talking about that
7 you didn't object at the time. That's what I meant. You
8 didn't object at the time on the grounds that they didn't
9 supply records under the subpoena.

10 MR. DAWSON: And Your Honor, we would not be seeking to
11 admit either Respondent's Exhibit 1 or 4 on the open-door
12 policy, because again, I don't believe -- I believe Mr. Phipps
13 testified from memory on those --

14 JUDGE WEDEKIND: Right. That was the testimony, yeah.
15 Yeah. And so again, I mean, he testified --

16 MS. DEMIROK: But there --

17 JUDGE WEDEKIND: -- so --

18 MS. DEMIROK: -- was also testimony about those, you
19 know, talking about issues and remedy of them in meetings, and
20 I think that not only goes towards the open-door policy, but
21 also to the meetings held January 28th and beyond where issues
22 were --

23 JUDGE WEDEKIND: Well, perhaps this is a good time to have
24 this discussion. You didn't object at the time he was
25 testifying about what they've done in the past with respect for

1 asking for complaints, that kind of thing. And you mentioned
2 earlier you wanted a standing objection, but that was, I
3 thought, related to documents, not to testimony. I expect you
4 to object to testimony that's given.

5 MS. DEMIROK: I -- you --

6 JUDGE WEDEKIND: That's not -- there's no standing
7 objection as to testimony.

8 MS. DEMIROK: No, I understand, Your Honor --

9 JUDGE WEDEKIND: Okay.

10 MS. DEMIROK: -- and --

11 JUDGE WEDEKIND: And now just to finish this, he's saying
12 that they're not going to rely on the documents on the open-
13 door policy. They're going to rely on the testimony. So
14 that's not -- I don't think the subpoena's a basis to -- I'm
15 interested in having the affidavits come in for one reason and
16 that is because sometimes it's not perfectly clear when you're
17 cross-examining and pointing out inconsistencies what was in
18 the prior affidavit.

19 MS. DEMIROK: Okay.

20 JUDGE WEDEKIND: And so it could be helpful to me.

21 MS. DEMIROK: Okay.

22 JUDGE WEDEKIND: And so I'm interested in -- actually, I'd
23 like to admit them.

24 MR. DAWSON: Your Honor, if it would help, and I guess
25 we'd have to find the time to do this, but if it would help we

1 wouldn't have any objection to only admitting -- no, that's
2 probably not going to be practical. I'm sorry.

3 JUDGE WEDEKIND: Well, you're asking those questions, I
4 think about Number 1, and that's the biggest one. Number 4 is
5 pretty short.

6 Any objection to the pictures?

7 MS. DEMIROK: No.

8 JUDGE WEDEKIND: Okay. So 1 through 4 Respondent are
9 received.

10 **(Respondent Exhibit Numbers 1 through 4 Received into Evidence)**

11 JUDGE WEDEKIND: Any further discussion you want to have
12 about the subpoena and --

13 MS. DEMIROK: Could we just get some clarification of what
14 it's being introduced into the record for or what it's being
15 admitted for, what it, you know, the scope of -- yeah, how it
16 can be relied on, as far as the affidavits?

17 MR. DAWSON: It would be in regard to the items that Mr.
18 Phipps was examined on, and I believe in each case that we
19 cited to the page and line. It would be for, to the extent
20 that he testified differently, it would be for impeachment
21 purposes or credibility. Obviously this is the purview of Your
22 Honor, and we think that that's an appropriate thing for Your
23 Honor to consider in evaluating the relative credibility of the
24 witnesses.

25 JUDGE WEDEKIND: That's the reason I'm admitting it.

1 MS. DEMIROK: No objection from General Counsel.

2 JUDGE WEDEKIND: Okay. Great.

3 MR. DAWSON: Okay.

4 JUDGE WEDEKIND: Any further questions? Are we done?

5 MR. DAWSON: From respondent perspective, yes, Your Honor.

6 JUDGE WEDEKIND: Okay. Thank you very much, Mr. Phipps.

7 Thanks for your testimony. Don't discuss it with any other

8 witness or potential witness until this proceeding's over.

9 Hopefully by Friday.

10 THE WITNESS: Okay. What about this material?

11 JUDGE WEDEKIND: You can just leave it. Leave it right
12 there, that's fine. Let's take a quick break. Five minutes.

13 (Off the record at 3:01 p.m.)

14 JUDGE WEDEKIND: All set?

15 MS. DEMIROK: Counsel for the General Counsel would like
16 to call --

17 JUDGE WEDEKIND: Wait, wait. Back on the record. Next
18 witness.

19 MS. DEMIROK: Counsel for the General Counsel calls Mr.
20 Thomas Wallace.

21 JUDGE WEDEKIND: Mr. Wallace, good afternoon. Would you
22 raise your right hand for me, please?

23 Whereupon,

24 THOMAS WALLACE

25 having been duly sworn, was called as a witness herein and was

1 examined and testified as follows:

2 JUDGE WEDEKIND: Thank you very much. Will you state your
3 name and spell it for us?

4 THE WITNESS: Thomas Wallace, T-H-O-M-A-S, last name
5 Wallace, W-A-L-L-A-C-E.

6 JUDGE WEDEKIND: Thank you.

7 **DIRECT EXAMINATION**

8 Q BY MS. DEMIROK: Good afternoon, Mr. Wallace. Are you
9 nervous today?

10 A Yeah, a little.

11 Q You ever done anything like this before?

12 A No.

13 Q Well, you know me, I'm Sara Demirok. I'm going to ask you
14 some questions, and Mr. Wallace, are you currently employed?

15 A No.

16 Q Have you ever been employed by Respondent, Shamrock Foods
17 Company?

18 A Yes.

19 Q And when were you hired?

20 A May 8th, 2008.

21 Q When did you stop working there?

22 A Just on April 6th, 2015.

23 Q And from May 8th, 2008 to April 6, 2015, did you ever
24 quit?

25 A No.

1 Q During that time did you work there continuously?

2 A Yes.

3 Q In what position did you most recently work?

4 A Warehouse loading.

5 Q And could you briefly describe for us what your duties
6 were in that position?

7 A Yeah. I loaded trailers for route delivery for the
8 following day.

9 Q Did you use any tools to load the trailers?

10 A Yeah, just pallet jacks, just the general warehouse
11 duties.

12 Q Who was your immediate supervisor?

13 A Jake Myers.

14 Q And do you know who he reports to?

15 A Yes, Armando Gutierrez.

16 Q And do you know who he reports to?

17 A Yes. Ivan Vaivao.

18 Q And what about Mr. Vaivao, who does he report to?

19 A Jerry Kropman.

20 Q Were there any floor captains that you worked with?

21 A Yes, three.

22 Q And who were those floor captains?

23 A Zack White, Art Manning and Pete -- I'm not sure of Pete's
24 last name.

25 Q Now, of those floor captains that you mentioned, how many

1 associates do they oversee?

2 A I'm saying probably 20 to 30 just in our area.

3 Q I'm going to draw your attention to January 28th, 2015.

4 Did you report to work that day?

5 A Yes.

6 Q And did you attend any meetings on that day?

7 A Yes, I did.

8 Q Were other employees present during that meeting?

9 A Yes.

10 Q About how many?

11 A The whole floor, so probably 200 plus.

12 Q And who conducted that meeting?

13 A That meeting was presented by Mark Engdahl.

14 Q And where was that meeting held?

15 A We stayed in the building; it's like a big auditorium.

16 Q Now, I'd like you to walk us through what happened in that
17 meeting.

18 A Well, that was the first meeting that the company gave on
19 Unions. They presented like an anti-Union video of the Union
20 members harassing people on the video, and after that, Mark
21 gave his personal accounts to why he wouldn't think Shamrock
22 would be a good fit for a Union.

23 Q Did anything else happen during the meeting?

24 A Yeah. After he gave his account of why he didn't think
25 Shamrock would benefit from the Union, he let us know that we

1 can come to them with any issues and like an open-door policy
2 and after that, he ended the meeting with questions from
3 employees.

4 Q And did anyone ask any questions?

5 A Yeah. There was about four questions. I honestly don't
6 remember what they were and who asked them, but on the fifth
7 question, I asked Mark a question.

8 Q Do you remember what you asked?

9 A Yeah, I asked him why is our competitors Union and we're
10 not.

11 Q And did he respond?

12 A Yeah. He said that he didn't know, that he thought maybe
13 it was like a financial reason.

14 Q Now at this time, were you aware of any Union organizing
15 at the warehouse?

16 A No, not until that time.

17 Q And after this meeting, did you report back to work?

18 A Yeah, I went back to my area where I work at.

19 Q And did anything happen when you reported back?

20 A Yeah. On the way there a lot of employees were talking
21 about, you know, that they're kind of really scared now, that
22 they're showing movies about the Union, and I went back to
23 work, and then shortly after, I'd probably say within 30
24 minutes, my manager came to me, Jake Myers, and he asked me
25 what I thought about the Union.

1 Q And what did you say?

2 A I told him honestly, I have to do some research, but I did
3 talk to my dad and my neighbor and the Sysco driver, and they
4 said that the Union has better benefits for employees, and I
5 told him I'd have to do my research first.

6 Q And when were you when this conversation took place?

7 A I was at my loading door, what I call the dock door.

8 Q And can you describe for us, just so we have a good idea
9 of what the workplace is like --

10 A Yeah, yeah, we're loading trailers, so we have trailers
11 from door two to 35, so we get assigned routes at each trailer
12 door, so when I came back from the meeting, I just went back to
13 my door that I was assigned.

14 Q And were there any other employees that --

15 A No.

16 Q -- that were nearby?

17 A No. And after I told him what I said, he shook his head
18 in agreement with me and didn't say anything.

19 Q And you said on this day you weren't aware of any Union
20 organizing, but at some point, did you hear about the Union
21 campaign in the warehouse?

22 A Up until that day, that was the first day I heard about
23 it.

24 Q What did you hear about?

25 A Well, just mainly chatter from other employees about how

1 maybe it's be a good fit for Shamrock. But after that there
2 was only, to my knowledge, is to all the meetings that we had
3 at work.

4 Q Did you ever go to a Union meeting?

5 A No. No. Shortly after my friend, Miguel, he took us
6 outside in the parking lot and he was telling us that there was
7 going to be like a Union meeting that we can go to soon, and
8 that -- he didn't give me the date right then and there, but
9 shortly after, I did go to like an earlier meeting at Denny's.

10 Q Do you know what Denny's that was?

11 A Yeah, that was on I-17 and Thomas.

12 Q And how did you know how to find where the meeting was?

13 A Yeah, Miguel gave me the phone number to Steve Phipps, and
14 I didn't know Steve prior to this, and I had the number and
15 right after work, I called it and he said they're at Denny's on
16 I-17 and Thomas, and that's where I went to.

17 Q And did you find them at Denny's?

18 A Yeah, yeah. He said they're in the back corner. So when
19 I went in, they were just breaking down, and present at the
20 table was Steve Phipps, Eric Anderson and Mike Wizner.

21 Q After meeting with the organizers, what, if anything, did
22 you decide going forward?

23 A Well, I was just basically asking them basic questions
24 about Union dues, nothing out of the ordinary. I did decide
25 that night that I believed a Union would benefit Shamrock and

1 the employees, so I ended up signing a Union card that night.

2 Q And then what happened when you left Denny's?

3 A Yeah, well, after we were at dinner, my wife was calling
4 me and telling me to come home, so when I left, I got in my
5 truck and I drove around and I saw Art Manning's red truck in
6 the parking lot.

7 Q And how do you know that it was Mr. Manning's truck in the
8 parking lot?

9 A Art has a very older, distinguished truck, and he has like
10 a football decal on the back of it, so once I turned the
11 corner, I knew it was him, but I didn't see him. I just saw
12 his truck.

13 Q And how did you feel when you saw Mr. Manning's truck
14 there?

15 A I was nervous, so I called Miguel and Miguel told me that
16 he was actually in the parking lot and that he saw Art walk in,
17 and he was afraid to go in, so he stayed in his truck. So I
18 felt nervous for the people who, like Steve or other people
19 that were in Denny's.

20 Q And why did Mr. Manning's presence make you so nervous?

21 A Well, maybe a year prior when they worked shifts, a lot of
22 people were unhappy about it, and Art came to me and he opened
23 his phone, and he has phone numbers of managers higher than the
24 ones I mentioned. He's been there a very long time, and he
25 knows a lot of the people above my supervisors.

1 Q Now, I'm going to draw your attention to mid-February
2 2015.

3 A Uh-huh.

4 Q Did you attend any meetings at work during that time
5 period?

6 A Yeah. Yeah. I was scheduled to come in early. Armando
7 told me to come in early the day after I had a meeting upstairs
8 with Ivan.

9 Q Did he tell you what the meeting was about?

10 A No.

11 Q And where did you report to the meeting?

12 A It was upstairs in a conference room. Ivan's office is
13 upstairs, so there's like a small conference room just down the
14 way.

15 Q And did any other employees attend the meeting?

16 A Yeah, there was eight order selectors, which is pickers,
17 and then one merge operator.

18 Q And who conducted the meeting?

19 A Natalie Wright, human resource manager, and Ivan Vaivao,
20 operations man.

21 Q Now starting at the beginning of the meeting, the best you
22 can recall, can you let us know what happened?

23 A Yeah, they basically wanted to talk about the Union. They
24 played another video that was like a short clip one that's
25 presented on the screen, and this was just an anti-Union video

1 again, but this one depicted them picketing outside in the
2 parking lot. So after that video, Ivan and Natalie, they
3 opened the floor to questions. Natalie started benchmarking
4 our benefits and pay to others in the industry, just showing us
5 that Shamrock is on par with industry standards, and then Ivan
6 wanted to know if there was any issues that we wanted to bring
7 up. He let us know that if the Union got in here, our pay
8 would go down and that we wouldn't be able to come to them with
9 any issues, we would have to go through the Union.

10 Q And you mentioned you watched a video. Was that the same
11 video that you watched in the Town Hall meeting?

12 A No, I believe it was different, but it was along the same,
13 like, lines. They had colored shirts and signs. I just took
14 it as like, it was definitely different, but it was along the
15 same lines.

16 Q And do you recall if either Ms. Wright or Mr. Vaivao took
17 any notes during that meeting?

18 A I can't recall for sure.

19 Q Do you know if any other employees attended similar
20 meetings?

21 A Yeah, right after I was done, Armando Gutierrez knocked on
22 the door, similar to this, and just indicated for the next
23 group of guys to come in.

24 Q Now, I'd like to draw your attention to March 31st, 2015.
25 Did you attend any meetings that day?

1 A Yes. Uh-huh.

2 Q And where was that meeting?

3 A That was in the same auditorium as the January 28th
4 meeting, right on the east side of the building at Shamrock.

5 Q And were there other employees there?

6 A Yeah. The whole floor was there, so probably 200 plus.

7 Q Okay. And what about Mr. Vaivao? Was he there?

8 A Yeah. Uh-huh.

9 Q And what about Mr. Engdahl; was he there?

10 A Yes.

11 Q Who conducted this meeting?

12 A Bob Beake, the VP of Human Resources.

13 Q And what was the general purpose of this meeting?

14 A This was a Town Hall meeting, so it was basically giving
15 the state of the company. They show graphs on how the stock is
16 going, they talk about benefits, just how the company's doing
17 as a whole.

18 Q Had you ever attended a meeting like this before?

19 A Yeah. Yeah. There were meetings like this two or three
20 times a year.

21 Q And in conducting this meeting can you briefly describe
22 what Mr. Beake talked about?

23 A Just the state of the company. They showed a couple clips
24 of Norman Kent, the owner, just talking about how good the
25 company is and how proud they are that they're still privately

1 owned.

2 Q And after the presentation, did Mr. Beake say anything
3 else?

4 A Yeah, yeah. After the end, he opened the floor to
5 questions.

6 Q And did anybody ask any questions?

7 A Yeah. There was two questions, one I don't remember what
8 the girl said, and the next was by Richard Sanchez. He asked
9 about the employee deductibles for our healthcare.

10 Q And did anybody else ask any questions?

11 A Yeah. Right after they were done with Rich, he opened the
12 floor, he said did anyone else have questions, and I raised my
13 hand, and I said, "Is there any way we can have our old
14 insurance back?"

15 Q And did Mr. Beake respond?

16 A Yeah, once I said that, people around me started clapping
17 a little, and Bob took back a little, and I said, "Yeah,
18 because the company's doing well, I was wondering if there was
19 any way we could have our old insurance back."

20 And he said, "At this time, this is the plan that we have.
21 This is the plan that we're going forward with. And once he
22 said that, then I raised my hand again and said, "Is there any
23 way, any consideration you can contribute the full amount into
24 our HSA card, our health standing account card?"

25 And he replied and he said, "Well, let's be honest, this

1 plan may not be the best, but this is the one that we have and
2 just say that we'll have it forever. I can't say that."

3 Q Did you hear his whole response?

4 A Yeah.

5 Q Did you expect that reaction from your coworkers?

6 A Honestly, no.

7 Q How would you describe your tone of voice when you asked
8 those questions?

9 A Just like I'm talking to you guys right now.

10 Q Were you yelling?

11 A No, no.

12 Q Did you interrupt anyone?

13 A No, uh-uh.

14 Q At some point, did you leave the meeting?

15 A Yes. I left shortly after I asked the question. There
16 was another girl that asked a question, and then that was the
17 time I grabbed my stuff and left.

18 Q Did you make any gestures when you left?

19 A No. And my manager, Jake Myers, left early and two other
20 employees left early. They had the whole floor in this
21 conference room. There was people standing along the walls, it
22 was very hot and stuffy, and I felt this after I was done with
23 my question, and I left.

24 Q Is that why you left when you did?

25 A Yes.

1 Q Do you know how much longer the meeting lasted after you
2 left?

3 A I would say five minutes.

4 Q And where did you go after you left?

5 A After I left the meeting, I went down to my loading area
6 and I walked into the command center and in there was Jake
7 Myers.

8 Q When you say command center, can you describe that for us?

9 A Well, the command center is like a shack where they keep
10 the computers and they do all the routes for the day.

11 Q And what, if anything, happened when you got to the
12 command center?

13 A Yeah, when I went in there, I said, "Hey, Jake, you missed
14 it. I asked a question about the healthcare and people started
15 clapping." I told him, I said, "I hope I don't get in trouble
16 for that."

17 He was like, "No, that's what Town Hall meetings are for,
18 to ask questions."

19 Q Why did you think you would get in trouble for asking that
20 question?

21 A Because I didn't expect the response from my coworkers
22 around me. I have five kids and a wife that stays home, so
23 healthcare is very important to me and that's why I asked the
24 question.

25 Q Did you and Mr. Myers talk about anything else?

1 A Yeah, I just told him -- he said, "No, no, that's what
2 questions are for."

3 I said, "Yeah, I had to leave a little early because it
4 was very hot and stuffy."

5 He's like, "Yeah, that's why I left early too." He left
6 early like halfway in the meeting, two other employees.

7 Q What, if anything, happened after that?

8 A After I left, I came back around and people were starting
9 to flood back, and then when I walked to my door, my captain
10 Pete came up on a tugger, and he said, hey, Ivan told me to
11 give you three trucks today.

12 Q What did he mean by that?

13 A Well, when you get three trucks, it's basically keeping
14 you there for an extra three-and-a-half to four hours; it's
15 like making my workload more for the day. So I didn't know
16 whether he was joking or not, and he looked serious. And he
17 said, "Yes, I'm serious. Ivan said give you three trucks."

18 I was like, I just kept walking to my door.

19 Q Did you end up getting three trucks that day?

20 A No, I didn't. No.

21 Q The next day, April 1st, did you report to work that day?

22 A Yes.

23 Q Did anything significant happen?

24 A No. Huh-uh.

25 Q Did you report to work on April 2nd?

1 A No, that was my scheduled day off.

2 Q Okay. And what about April 3rd? Did you report to work
3 that day?

4 A Yes. Uh-huh.

5 Q Did anything significant happen?

6 A No, nothing out of the ordinary.

7 Q And what about April 4th? Did you report to work that
8 day?

9 A That was a Saturday and that's our day off.

10 Q Okay. And on April 5th did you report to work that day?

11 A Yes. Uh-huh.

12 Q Did anything significant happen?

13 A No. Huh-uh.

14 Q What about April 6th? Did you report to work that day?

15 A Yes. Uh-huh.

16 Q And did anything significant happen that day?

17 A Yeah, definitely. After lunch it was around 12:45 I went
18 back to the command center and I asked Zack Whiteman. He was
19 doing the routes for the day. I said, "Hey, Zack. Am I
20 getting three trucks?" And he said, "No, Ivan's looking for
21 you." I was like, "Oh, okay." So I went to look for Ivan. I
22 walked upstairs, went to his office and he wasn't there. So I
23 sat there for a couple minutes and then Ivan walks in and he
24 said, "Hey, Armando's looking for you." I was like okay. So
25 then I went back downstairs, walked across the dock and that's

1 when I saw Armando. And Armando said, "Hey, you need to grab
2 your stuff."

3 Q What did he mean by that?

4 A Well it's pretty common practice when they tell you to
5 grab your stuff you're being walked out. So I was like okay.
6 So I grabbed my bag and my lunch box and I was walking with
7 him. And Armando said, "What did you do?" And I told Armando.
8 I said, "I didn't do anything. You think it was about the
9 healthcare?" He said he didn't know.

10 Q And where did you end up?

11 A Yeah, well he took me to the HR room in the front of the
12 building at Shamrock.

13 Q And did you go into an office?

14 A Yeah. Yeah, I went into the office and James Allen, human
15 resource officer, was in there and Ivan Vaivao.

16 Q Now I'd like you to tell us to the best you can recall
17 what happened once you arrived in the office?

18 A Yeah, well when I went in there he shut the door and it
19 was just me, James and Ivan. And I said, "What's going on,
20 Ivan?" He said, "Oh, we have a situation here. Senior staff
21 was offended that you asked about the healthcare." And I said,
22 "What are you talking about?" He said, "Yeah, senior staff
23 thought you were rude and disrespectful and you're being
24 terminated."

25 Q Did he say anything else?

1 A Yeah, I told him. I said, "Ivan how can I get fired for
2 asking a question where questions were asked upon." And he
3 said that senior staff came together and that this decision
4 came from Norm and Kent and that you're not going to be happy
5 with the benefits that we give you so you can find a company
6 with better benefits.

7 Q When he said Norm and Kent do you know who he was
8 referring to?

9 A Yeah, those are the owners of Shamrock Foods.

10 Q Now did Mr. Allen say anything during the meeting?

11 A Yeah, he told me it was his second day on the job and that
12 he needed to make a copy of a packet. So then when he left I
13 turned to Ivan. I said, "Ivan what do I do? I have five kids
14 and a wife. Do I cash out my 401?" And he told me, "No, Tom.
15 Find a new job, roll it over and definitely see someone about
16 this."

17 Q What did you take that to mean?

18 A Well I knew it was wrongful termination. I told him that
19 I wasn't signing anything until I had a lawyer. And Ivan was
20 very distraught. He was shaking his hands like this and he was
21 not happy about the situation.

22 Q How long had you worked with Mr. Vaivao?

23 A Seven years.

24 MS. DEMIROK: May I approach?

25 JUDGE WEDEKIND: Yes.

1 MS. DEMIROK: Thank you.

2 Q BY MS. DEMIROK: Now, Mr. Wallace, I'm handing you what's
3 been marked as GC Exhibit Number 26. Do you recognize this
4 document?

5 A Yes, this is the packet that was handed to me on April
6 6th.

7 Q And I'd like you to turn to the second to last page.

8 A Okay.

9 Q Do you see your signature anywhere on there?

10 A Yes. Uh-huh.

11 Q And for what purpose did you sign this?

12 A I signed this accepting that I received the packet but not
13 the terms. That's what they told me.

14 Q And do you know if they retained a copy of this?

15 A Yeah, I believe so. That's why James went and made a
16 copy.

17 Q Okay.

18 MS. DEMIROK: And I'd just like to point out for the
19 record that this was an item that was subpoenaed that was not
20 produced.

21 Q BY MS. DEMIROK: And, Mr. Wallace, take your time.

22 A Yeah, there's no --

23 Q I'm just going to ask you --

24 A -- water in there.

25 Q Yeah. Oh, no water? We'll get you some water.

1 A Thank you.

2 Q Now if you could take a look through at each page of this
3 document --

4 A Yeah.

5 Q -- and once you're done let me know. Okay.

6 A Okay.

7 Q Now is this an accurate representation of the agreement
8 that you were given on that day?

9 A Yeah.

10 MS. DEMIROK: Your Honor, at this time General Counsel
11 would move to admit what's been marked as GC Exhibit Number 26.

12 MR. DAWSON: No objection, Your Honor.

13 JUDGE WEDEKIND: It's received. Thank you.

14 **(General Counsel Exhibit Number 26 Received into Evidence)**

15 Q BY MS. DEMIROK: Now, Mr. Wallace, did anything else
16 happen during this meeting that you can recall?

17 A No, that was pretty much the gist of it.

18 Q Okay. And what were all the reasons that Mr. Vaivao gave
19 you for why you were being fired?

20 A He told me I was rude and disrespectful and about bringing
21 up about the health insurance.

22 Q And was that your understanding of why you were fired?

23 A Yes.

24 Q Have you ever heard any other reasons from any managers --

25 A No.

1 Q -- at Shamrock?

2 A No.

3 JUDGE WEDEKIND: Can I just clarify something? Who told
4 you that? Was --

5 THE WITNESS: Ivan Vaivao.

6 JUDGE WEDEKIND: -- okay. But there was another person in
7 the meeting as well, right?

8 THE WITNESS: Yeah, James Allen.

9 JUDGE WEDEKIND: Okay. But it was Ivan?

10 THE WITNESS: Ivan was doing all the talking.

11 JUDGE WEDEKIND: Okay.

12 THE WITNESS: Yeah, James said it was his second day on
13 the job so --

14 JUDGE WEDEKIND: Okay. Thanks.

15 Q BY MS. DEMIROK: Now did either Mr. Vaivao or Mr. Allen
16 did they ever mention the fact that you left early in that
17 meeting is for being a reason of why you were terminated?

18 A No. Huh-uh.

19 Q Now was that your last day at Shamrock?

20 A Yes, it was.

21 Q And just to be clear they didn't mention any other reason
22 why you were being fired that day?

23 A No. Huh-uh.

24 Q And how has it impacted your life since you stopped
25 working there?

1 A Well after I walked out I had to call my wife and I told
2 her that --

3 MR. DAWSON: Your Honor, can I object on relevance.

4 JUDGE WEDEKIND: Object. What's the relevance?

5 MS. DEMIROK: Well it obviously had a big impact on his
6 life and it's part of -- I -- and just things -- feels like he
7 should have an opportunity to express that.

8 JUDGE WEDEKIND: You know I don't disagree with that but,
9 Mr. Wallace, the purpose of the hearing it has a limited
10 purpose and it's just not relevant to the decision in the case.

11 THE WITNESS: I understand, Your Honor.

12 JUDGE WEDEKIND: So I'm going to have to -- I'm going to
13 have to grant the objection.

14 THE WITNESS: Okay.

15 JUDGE WEDEKIND: Okay.

16 MS. DEMIROK: Fair enough. Mr. Wallace, I don't have any
17 other questions for you.

18 THE WITNESS: Okay. Thank you.

19 JUDGE WEDEKIND: Cross.

20 MR. DAWSON: Can I take a few minutes, Your Honor?

21 JUDGE WEDEKIND: Sure. Let's go off the record.

22 MR. DAWSON: But before we go off the record --

23 JUDGE WEDEKIND: Oh. Stay on the record.

24 MR. DAWSON: -- sorry.

25 THE WITNESS: Okay.

1 MR. DAWSON: I'm sorry. I had the April 22nd affidavit.

2 Is there -- are there any other affidavits?

3 MS. DEMIROK: No other affidavits from --

4 MR. DAWSON: No other affidavits from Mr. Wallace. Okay.

5 Thank you, Your Honor.

6 JUDGE WEDEKIND: Okay. Off the record.

7 (Off the record at 3:45 p.m.)

8 JUDGE WEDEKIND: All right. Back on the record. Cross.

9 MR. DAWSON: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 Q BY MR. DAWSON: Mr. Wallace --

12 A Yes, sir.

13 Q -- my name's Todd Dawson. I'm an attorney for Shamrock.

14 A Okay.

15 Q And I just want to ask you a couple of questions --

16 A Yes.

17 Q -- about your testimony. Did you meet with anyone to
18 prepare your testimony?

19 A Yes, I did.

20 Q And who was that?

21 A Sara Demirok.

22 Q Okay. And when did you meet with Ms. Demirok?

23 A I met with her on Sunday.

24 Q Sunday? Okay.

25 A Yeah.

1 Q So that was yesterday?

2 A Yeah.

3 Q Okay. Today's Monday.

4 A Yeah.

5 Q Okay.

6 A Sorry.

7 Q No, that -- we're -- I could use a reminder of the day of
8 the week. And did you meet in person with Ms. Demirok?

9 A Yes. Uh-huh.

10 Q All right. Did you review any documents?

11 A No, just my affidavit.

12 Q Your affidavit or your severance agreement?

13 A Or no. I'm sorry. Yeah, my affidavit.

14 Q Okay. So I think is that your severance agreement in
15 front of you?

16 A Yeah, that's my separation packet.

17 Q Okay. All right.

18 A Yeah, I'm sorry.

19 Q So you reviewed your -- no problem. No problem. Do
20 you -- have you heard anything about the testimony thus far in
21 this case?

22 A No, I haven't.

23 Q Okay. And I think you mentioned you started at Shamrock
24 in 2008 --

25 A Yes.

- 1 Q -- right? Okay. And you were a loader?
- 2 A Yes. Uh-huh.
- 3 Q And that's a position in the warehouse?
- 4 A Yes. Uh-huh.
- 5 Q And then you worked as a loader what -- until 2010?
- 6 A Yeah, it was like two and a half years and then I put in a
- 7 transfer to transportation.
- 8 Q To transportation. Okay.
- 9 A Yes.
- 10 Q And that's a driver?
- 11 A Uh-huh. Yeah.
- 12 Q And you were a driver until about 2012?
- 13 A Right. Yeah. Uh-huh.
- 14 Q Okay. Now you -- in 2012 you went back to being a loader?
- 15 A Yes. Uh-huh.
- 16 Q All right. Now after that you had expressed interest in a
- 17 number of management positions, correct?
- 18 A Yes. Uh-huh.
- 19 Q Okay. And I think you applied for a supplier relationship
- 20 manager?
- 21 A Yeah. Uh-huh.
- 22 Q All right. You applied to be a supervisor?
- 23 A Yeah. Uh-huh.
- 24 Q You applied to be a brands manager?
- 25 A Yep.

1 Q And you applied to go into HR?

2 A Yes, I applied for everything I could.

3 Q Okay. Now you had a number of disciplinary notices as a
4 loader, right?

5 A Uh-huh.

6 Q And you were disciplined another five times during your
7 time as a driver?

8 A Disciplined as far as --

9 Q For violating hours of service, regs and things like that?
10 Do you recall being disciplined as a driver?

11 A No, I believe there was one incident where I went above my
12 hours and then --

13 Q Okay.

14 A -- I did get a write up for that.

15 Q Okay. So --

16 A But I did have some attendance issues, yes.

17 Q Okay. Let me show you a copy of what I'm going to mark as
18 Respondent's Exhibit 5.

19 **(Respondent Exhibit Number 5 Marked for Identification)**

20 THE WITNESS: Okay.

21 Q BY MR. DAWSON: I apologize. I'm sorry.

22 MS. DEMIROK: And, Your Honor, this may be premature but
23 if this any kind of disciplinary record from the time he was a
24 driver I'm going to object to relevance.

25 MR. DAWSON: This is not.

1 Q BY MR. DAWSON: Mr. Wallace, you filed the charge in this
2 case, correct?

3 A Uh-huh.

4 Q And after filing the charge you provided an affidavit?

5 A Uh-huh.

6 Q Do you recall that?

7 A Yeah. Uh-huh.

8 Q Okay. That was on April 22nd that you signed it?

9 A Yes.

10 Q And you signed that affidavit under oath?

11 A Uh-huh.

12 Q So you know the whole truth, nothing but the truth so help
13 you God, et cetera?

14 A Yes, I remember --

15 Q Okay.

16 A -- yeah.

17 Q All right. And your affidavit was the whole truth and
18 nothing but the truth?

19 A Yes.

20 Q Okay. Now I think I'm going to go -- you -- we agree that
21 you had had a number of disciplinary notices in your file,
22 correct?

23 A Uh-huh.

24 Q Okay. Can you look on page two, line six and seven of
25 your --

1 A Uh-huh.

2 Q -- affidavit? It says, "I had one prior discipline in my
3 file which included a written warning for attendance issued
4 November 2014 but I believe has fallen off."

5 A Yeah. Uh-huh.

6 Q Did I read that correctly?

7 A Yes, sir.

8 Q Okay. Now I think -- I'm sorry. I jumped ahead here.

9 Now you had testified a little bit about a meeting with Ivan --

10 A Uh-huh.

11 Q -- in mid-February I think it was?

12 A Late February.

13 Q It was late February?

14 A Yeah.

15 Q Okay. So that would not have been on February 5th?

16 A No --

17 Q No.

18 A -- I believe it was towards the --

19 Q Toward the end. Could've been February --

20 A In the middle to the end, sometime around there. That was
21 with Ivan and Natalie.

22 Q Ivan and Natalie?

23 A Yeah.

24 Q Okay. So would that have been February 24th?

25 A I don't recall honestly.

1 Q Okay. All right. Do you remember? Was it? I think you
2 mentioned that Natalie discussed benchmarking in that --

3 A Yeah.

4 Q -- meeting?

5 A Yeah, she --

6 Q Okay.

7 A -- benchmarked our benefits to other food industries like
8 similar --

9 Q Okay. Were there --

10 A -- yeah.

11 Q -- wages also discussed?

12 A Yes. Yes, she did talk about wages and benefits, medical,
13 yes.

14 Q 401(k)?

15 A I don't remember her talking about 401(k).

16 Q Okay. Don't -- you don't remember that? Okay.

17 A Yeah.

18 Q Okay. Now I think you had also mentioned that Ivan said
19 pay would go down. Do you recall your --

20 A Yeah.

21 Q -- testimony on direct?

22 A Yeah, he did say that. Yeah.

23 Q Okay. Now didn't Ivan actually say though that you would
24 have to pay dues and association fees?

25 A He did say that as well.

1 Q Okay. And that would come out of your pay?

2 A That I'm not sure of.

3 Q Okay.

4 A I just remember him saying that we'll have to pay dues and
5 that we wouldn't be making as much as we're making now.

6 Q Okay. But you don't remember if he said because you'd be
7 paying dues and association fees?

8 A No, he just told me that we would pay the dues and then
9 later on he mentioned about how our pay would go down if the
10 Union did come in here.

11 Q Okay.

12 A And then Natalie said that we wouldn't be able to come to
13 them with any issues that we had. And that's when a couple of
14 the pickers were saying well you guys don't do anything now so
15 why would we -- so -- but in that meeting there was eight
16 pickers. I was the only loader. So they were bringing up
17 complaints that I really didn't know too much about because
18 it's a different job function within the warehouse.

19 Q Okay. Pickers are they're --

20 A Yeah --

21 Q -- they put the stuff on the --

22 A -- they're order --

23 Q -- conveyor, right?

24 A -- selectors so they pick from slots and they put tags on
25 them. And then I'm the one on the ground loading them into the

1 trailer.

2 Q They put the stuff on a belt?

3 A Yeah.

4 Q Is that right?

5 A Uh-huh.

6 Q Okay. And the belt comes down and you take it off?

7 A Yeah.

8 Q I see. All right. Now I think you talked about an all
9 associates meeting on March 31st.

10 A Yes. Uh-huh.

11 Q Do you recall that?

12 A Yeah.

13 Q That was a mandatory meeting?

14 A Yes, town hall. Uh-huh.

15 Q And I think you mentioned that you asked Bob Beake some
16 questions about healthcare?

17 A Yes. Uh-huh.

18 Q Now there were other people in that meeting who asked
19 benefits questions, correct?

20 A That's true, yes.

21 Q Was Frank Sanchez one of them?

22 A No, his name's Richard Sanchez.

23 Q Richard Sanchez. I'm sorry.

24 A And then the girl -- it was a lady. I don't know who she
25 was but I believe she asked about the medical too. I'm not

1 sure.

2 Q They were both asking about benefits?

3 A Yeah.

4 Q All right. Do you know if anything -- were they -- if
5 they were disciplined?

6 A Not that I know of.

7 Q Not that you know of. Okay.

8 A But I know Richard Sanchez also applied for the supervisor
9 position as well.

10 Q Okay. Same as you?

11 A Well that -- on that job posting I didn't post for that
12 supervisor job. He did. But I did post for one prior to that.

13 Q Same?

14 A Yeah, same title.

15 Q Same title --

16 A Yeah.

17 Q -- yeah.

18 A Uh-huh.

19 Q Thank you. I was trying to think of the word. Okay. Now
20 when you asked your question I think you said people clapped
21 but --

22 A Yes.

23 Q -- most people laughed though didn't they?

24 A Well there -- I can't explain it. It was -- there's
25 people around me and they're like -- like that -- and like yeah

1 like. I can't recall exactly what they were --

2 Q You can't recall?

3 A -- yeah.

4 Q Okay. That's fair.

5 A But there was chatter.

6 Q Sure. All right. And when you asked your questions Mr.

7 Beake didn't appear to be upset, right?

8 A No, he was just taken aback.

9 Q Okay. But he wasn't --

10 A I just --

11 Q -- upset? He --

12 A -- no.

13 Q -- answered you --

14 A Right. He did --

15 Q -- right?

16 A -- answer the questions, yeah.

17 Q And he didn't you know scold you or and --

18 A No.

19 Q -- for lack of a better term --

20 A No. Huh-uh.

21 Q -- okay. And he answered your questions I guess to the

22 best of his ability?

23 A Yeah. Uh-huh.

24 Q Now I think you mentioned on direct that you left the

25 meeting after the exchange with Bob?

1 A Yes. Uh-huh.

2 Q All right. And there were still about five minutes
3 left --

4 A Right. Uh-huh.

5 Q -- in the meeting? Okay. So the meeting wasn't over?

6 A Right.

7 Q Okay. And a few days later I think you said April 6th --

8 A It was a --

9 Q -- is that right?

10 A -- week later.

11 Q A week later. Okay.

12 A Yeah.

13 Q Okay. Right. March 31st. So it was April 6th six days.
14 Okay.

15 A Yeah.

16 Q You had the meeting with Ivan and James?

17 A James, yeah.

18 Q James Allen. All right. Now I think you mentioned that
19 when you came in Zack said Ivan was looking for you?

20 A Yeah, after lunch I went to the command center and he said
21 that Ivan was looking for me.

22 Q Okay. Did you start at -- what time did you start that
23 day?

24 A We started in the morning like 9:30.

25 Q Okay. So you had been there for a couple of hours?

- 1 A Yeah, pretty much like --
- 2 Q Got you.
- 3 A -- almost half of the shift.
- 4 Q Got you. All right. And so you came back from lunch.
- 5 Zack said Ivan's looking for you?
- 6 A Yeah. Uh-huh. You need --
- 7 Q What --
- 8 A -- to go see Ivan.
- 9 Q -- and you went up to Ivan's office?
- 10 A Yes. Uh-huh.
- 11 Q And Ivan saw you?
- 12 A Yeah, I sat there a couple of minutes and then he walked
- 13 in. And then he said, "Hey, Armando's looking for you."
- 14 Q Okay. Did you ask Ivan?
- 15 A No, he didn't tell me anything.
- 16 Q Like I mean did you say I thought you --
- 17 A Oh, I just said --
- 18 Q -- were looking for me?
- 19 A -- "Hey, Ivan. You're looking for me or" -- yeah. And
- 20 then he said, "Yeah, Armando's looking for you. You need to go
- 21 find Armando."
- 22 Q Well let me just step back a little real quick. The --
- 23 did you say to Ivan, "I thought you were looking for me"?
- 24 A Yeah, I said, "Were you looking for me?"
- 25 Q And what --

- 1 A That what I was --
- 2 Q -- did Ivan say?
- 3 A -- told from my captain is to see Ivan.
- 4 Q And what did Ivan say?
- 5 A He said Armando's looking for me.
- 6 Q Okay. So he didn't say --
- 7 A Or Armando Gutierrez.
- 8 Q Armando Gutierrez.
- 9 A Uh-huh.
- 10 Q And Armando I think you --
- 11 A And Armando is Jake's supervisor.
- 12 Q I was just going to ask you that.
- 13 A Yeah.
- 14 Q Armando would supervise Jake who supervises you right
- 15 or --
- 16 A Yeah.
- 17 Q -- supervised you?
- 18 A Yeah.
- 19 Q Okay. All right. And Armando reports to --
- 20 A To Ivan --
- 21 Q -- to Ivan --
- 22 A -- yeah.
- 23 Q -- right? So that would've been the chain of command?
- 24 A Right.
- 25 Q Got you. So you went from Ivan's office --

- 1 A Ivan's office --
- 2 Q -- down to Armando?
- 3 A -- back to the all the way back to across to --
- 4 Q Okay.
- 5 A -- see Armando.
- 6 Q Okay. And Armando's --
- 7 A That's when he -- to grab my stuff.
- 8 Q You got to go back to Ivan's office. Oh, to grab your
- 9 stuff?
- 10 A Yeah, that he --
- 11 Q Okay.
- 12 A -- and then he walked me to HR.
- 13 Q Got you. All right. Now once you got to HR that's -- you
- 14 just met with Ivan and Mister --
- 15 A James Allen --
- 16 Q -- Allen --
- 17 A -- yeah.
- 18 Q -- right?
- 19 A Uh-huh.
- 20 Q All right. Bob Beake was not there?
- 21 A No, he wasn't there.
- 22 Q All right. And in fact you had no further conversations
- 23 with Mr. Beake --
- 24 A No.
- 25 Q -- after the 31st?

1 A No.

2 Q All right. Can you look with me on your declaration which
3 is -- or affidavit. I'm sorry. Your affidavit which has been
4 marked Respondent's Exhibit 5 and this is on page nine. I'm
5 sorry. This is on page two --

6 A Uh-huh.

7 Q -- lines four and five.

8 A Yeah.

9 Q "Bob Beake is the vice president of human resources and
10 James Allen is also a human resource officer. Both individuals
11 were present during my termination."

12 A Yes.

13 Q Did I read that correctly?

14 A Yes. Uh-huh.

15 Q Okay. But that -- that's not the case?

16 A That is not the case, no.

17 Q Okay.

18 A I made a mistake there.

19 Q Okay. Well it's -- okay. Now that I imagine was a pretty
20 upsetting episode?

21 A Yeah.

22 Q Yeah, getting separated or terminated. okay.

23 A I wouldn't put my job on the line when I have five kids
24 and a wife. I wouldn't risk my financial future for any of
25 that.

1 Q Uh-huh. Now Ivan I think you mentioned was -- appeared to
2 be distraught I think you --

3 A Yes --

4 Q -- said. Okay.

5 A -- he was very upset.

6 Q He didn't -- your -- in your sort of in your view he
7 wasn't happy about having to --

8 A Not at all.

9 Q -- be where he was?

10 A No, I --

11 Q Okay. Let me --

12 A -- remember him going like this with his hands and he was
13 very upset.

14 Q Okay. And just because the court reporter's taking down
15 our words I'll try --

16 A Oh, okay.

17 Q -- not to talk over you. And I mean I --

18 A Okay. I'm sorry.

19 Q -- know we're having a conversation so it's --

20 A Okay.

21 Q -- a little bit different. But if we could just --

22 A Okay.

23 Q -- you know kind of --

24 A Sure.

25 Q -- you know have a gap or so between our words. And Ivan,

1 you had worked with Ivan for seven years I think --

2 A Yes.

3 Q -- right?

4 A Uh-huh.

5 Q And Ivan took you back from transportation, right?

6 A Uh-huh.

7 Q Yes?

8 A I put in the paperwork to transfer back to the warehouse
9 and HR approved that.

10 Q Okay. But Ivan -- to your knowledge did Ivan go to HR and
11 say yeah, I'll take Wallace?

12 A I don't have any knowledge of that.

13 Q Okay. All right. And Ivan's for lack of a better term a
14 good guy?

15 A I would say so, yes.

16 Q Okay. And I think you thanked him after --

17 A Yeah.

18 Q -- the meeting, right?

19 A Uh-huh.

20 Q Ivan's a credible guy?

21 A Yes.

22 MS. DEMIROK: Objection.

23 MR. DAWSON: Yes. Okay.

24 JUDGE WEDEKIND: Is there an objection?

25 MR. DAWSON: Oh, I'm sorry. Was there an objection?

1 MS. DEMIROK: Objection, Your Honor. I guess insofar as
2 he has personal knowledge of his credibility.

3 MR. DAWSON: Well he worked with Ivan for seven years,
4 Your Honor.

5 MS. DEMIROK: And I guess I would also object on grounds
6 of what he's -- if he's eliciting testimony in regards to Mr.
7 Vaivao's -- his opinion of Mr. Vaivao's --

8 JUDGE WEDEKIND: Overruled.

9 MS. DEMIROK: Thank you, Your Honor.

10 Q BY MR. DAWSON: Now, Mr. Wallace --

11 A Yes.

12 Q -- you testified that you were offered a severance
13 package, right?

14 A Yes, sir. Uh-huh.

15 Q That's the document right in front of you there that's
16 marked General Counsel Exhibit 26?

17 A Yes.

18 Q Okay. And as I understand it and I'd understand it better
19 I could find my copy. Here it is. Just from looking at the
20 front, at the first page it says that you'll be paid a lump sum
21 in the amount of 4,425.84. Is that right?

22 A That's correct.

23 Q And then it mentions about some vacation days, that you
24 owed the company \$1,048?

25 A Yes, I remember.

1 Q And then two sick days that were earned but not taken for
2 which you were going to be paid \$437.56?

3 A Right.

4 Q Is that right?

5 A Yes, sir.

6 Q Okay. So my math is not great but that's about \$6,000?

7 A Somewhere around there.

8 Q Somewhere around there, right --

9 A Yeah.

10 Q -- but let's -- yeah, you and I can agree that it's
11 whatever it is. Let's call it --

12 A Yeah.

13 Q -- 6,000. It is what it is. We won't do the addition.
14 So in essence you were offered about \$6,000 to sign this
15 agreement?

16 A Right.

17 MS. DEMIROK: Objection. The document speaks for itself.

18 MR. DAWSON: I'm asking him a question about his
19 understanding which will -- I'll -- will become clear if Your
20 Honor will give me --

21 JUDGE WEDEKIND: The relevance will come, become clear?

22 MR. DAWSON: It will, yeah.

23 MS. DEMIROK: And also --

24 MR. DAWSON: If you could give me --

25 MS. DEMIROK: -- I would object that --

1 MR. DAWSON: -- a few more questions.

2 MS. DEMIROK: -- cross-examining on a document that wasn't
3 produced via subpoena.

4 JUDGE WEDEKIND: This -- the document as alleged is a
5 violation?

6 MS. DEMIROK: It is.

7 JUDGE WEDEKIND: Okay. And --

8 MS. DEMIROK: Specific paragraphs of the document.

9 JUDGE WEDEKIND: -- and what's the basis? Can we discuss
10 this in front of the witness? What's the basis for the
11 allegation --

12 MS. DEMIROK: Just --

13 JUDGE WEDEKIND: -- the theory?

14 MS. DEMIROK: -- that's -- several of their provisions are
15 overly broad and discriminatory.

16 JUDGE WEDEKIND: Because --

17 MS. DEMIROK: Because they infringe on employee sections
18 on the rights.

19 JUDGE WEDEKIND: In what way?

20 MS. DEMIROK: Let me pull out the complaint so I can refer
21 to the specific paragraphs. The complaint alleges at paragraph
22 9, 10, 12 and 13 in the document. I believe one contains or
23 even maybe more than one contains a confidentiality agreement
24 that we allege as being overly broad and paragraph 9. It's
25 also discussed in paragraph 10 and in paragraph 12 and then --

1 JUDGE WEDEKIND: Okay. So but --

2 MS. DEMIROK: -- in paragraph --

3 JUDGE WEDEKIND: -- so none of it has to do with how much
4 money he was offered --

5 MS. DEMIROK: Absolutely.

6 JUDGE WEDEKIND: -- directly, yeah. So what is the
7 relevance of --

8 MR. DAWSON: Well, Your Honor, what I was going to mention
9 I think I believe the allegation in the complaint is that the
10 company promulgated an overly broad policy. And my question to
11 the witness was going to be you understood that if you signed
12 the agreement you'd get the money but you'd be bound by the
13 agreement. You didn't sign the agreement so you didn't get the
14 money so you're not bound by the agreement because it --

15 JUDGE WEDEKIND: And basically that it was voluntary?

16 MR. DAWSON: Well and that it's not in effect because
17 of -- I think the General Counsel has asked for an order having
18 us rescind the agreement but the agreement had a 21 day
19 expiration. As it was it's not binding. There's nothing to
20 rescind.

21 JUDGE WEDEKIND: It's not a rule?

22 MR. DAWSON: It's not a rule. Exactly.

23 JUDGE WEDEKIND: Is it your position that this is a rule?

24 MS. DEMIROK: Our position's that this is a rule.

25 JUDGE WEDEKIND: Is it based just on this or is it based

1 on --

2 MS. DEMIROK: It is based on this.

3 JUDGE WEDEKIND: Just this. So the one time use of the
4 agreement is a rule?

5 MS. DEMIROK: Or we can allege it as a directive and amend
6 the complaint if that's --

7 JUDGE WEDEKIND: Directive. You know I -- I'll allow the
8 questioning. Go ahead.

9 MR. DAWSON: Okay.

10 JUDGE WEDEKIND: Overruled. I'll overrule the objection.

11 MR. DAWSON: Thank you, Your Honor.

12 Q BY MR. DAWSON: Mr. Wallace, you understood and we can
13 keep this general. I don't -- we don't necessarily need to go
14 into the document. But you understood if you signed the
15 document you'd get the money?

16 A Right. Uh-huh.

17 Q Okay. And if you signed the agreement you'd be bound by
18 the agreement?

19 A If I signed -- yes. If I signed --

20 Q And --

21 A -- it.

22 Q Uh-huh.

23 A I just signed that I accepted the packet --

24 Q Right.

25 A -- and not the terms.

- 1 Q Right. Which was not an acceptance, right?
- 2 A Right.
- 3 Q That was just --
- 4 A Uh-huh.
- 5 Q -- saying yeah, I got the document --
- 6 A Right.
- 7 Q -- correct?
- 8 A Uh-huh.
- 9 Q But you didn't sign the document to agree to it?
- 10 A No, sir.
- 11 Q And so you didn't get the money --
- 12 A No, sir.
- 13 Q -- and you're not bound by the agreement?
- 14 A No.
- 15 Q No. Okay. And you had 21 days to consider it, right?
- 16 A Right.
- 17 Q And then it was off the table?
- 18 A Yeah, that was the writing in the back page --
- 19 Q Okay.
- 20 A -- that I read, yeah.
- 21 Q Now after you were discharged --
- 22 A Uh-huh.
- 23 Q -- you filed the charge in this case, correct?
- 24 A Yeah. Uh-huh.
- 25 Q Okay. You also filed a charge with the EEOC --

1 A Yes. Uh-huh.

2 MS. DEMIROK: Object. Relevance.

3 MR. DAWSON: -- alleging -- again if I may.

4 JUDGE WEDEKIND: What's the relevance?

5 MR. DAWSON: Just on the Wright Line burden in terms of
6 showing that he would've been discharged even in the absence of
7 concerted, protected concerted activity it's -- would we able
8 to excuse the -- I only have like one question on this. I have
9 to have the witness get up.

10 JUDGE WEDEKIND: Yeah, I -- I'm going to let him get up.
11 I'm not sure the relevance of this. If you don't want to
12 discuss it -- would you mind stepping outside for a minute?

13 THE WITNESS: Yeah, sure.

14 JUDGE WEDEKIND: Sure. Thanks.

15 MR. DAWSON: I apologize.

16 JUDGE WEDEKIND: Did he answer the question yet? Okay.
17 Did he?

18 MR. DAWSON: I --

19 JUDGE WEDEKIND: He didn't. Okay. Go ahead.

20 MR. DAWSON: -- I don't believe he did.

21 JUDGE WEDEKIND: So you're -- you want to ask him if he
22 thought filed other charges?

23 MR. DAWSON: He filed the EEOC charge saying that he was
24 discharged on the basis of his disability. Understanding that
25 this is you know a bit of a novel theory Wright Line says in

1 the affirmative defense that if we would've taken the same
2 action even in the absence of protected concerted activity. So
3 my question to the witness was going to be so is it your view
4 that you would've been fired for your disability even in the
5 absence of your protected concerted activity. Obviously that
6 would if -- you know if proven that would still be unlawful.
7 But I think it is still relevant in terms of whether or not
8 this is something that's cognizable under the National Labor
9 Relations Act as opposed to the ADA or you know the state
10 disability law.

11 MS. DEMIROK: Your Honor, if I may?

12 JUDGE WEDEKIND: Yeah, sure.

13 MS. DEMIROK: I would just say that with -- it's going to
14 call for a lot of speculation on his part as far as you know
15 what he thinks the Employer would have done and in the absence
16 of something else. And he's already testified as to what he's
17 been told by the Employer as far as the reason why he was
18 discharged.

19 MR. DAWSON: Well --

20 JUDGE WEDEKIND: Yeah --

21 MR. DAWSON: -- why --

22 JUDGE WEDEKIND: -- his --

23 MR. DAWSON: -- well it may or may not be speculation.
24 He's asserted a claim that that's in fact what would've
25 happened.

1 JUDGE WEDEKIND: Okay. But why does that have any
2 relevance to what the company did?

3 MR. DAWSON: Well only because of the Wright Line burden,
4 Your Honor, and --

5 JUDGE WEDEKIND: But what does his opinion have to do with
6 the Wright Line burden? That's the problem.

7 MR. DAWSON: Well I don't think it -- it's conclusive on
8 the issue but I think it's probative.

9 JUDGE WEDEKIND: Why?

10 MR. DAWSON: Because --

11 JUDGE WEDEKIND: Just tell me why.

12 MR. DAWSON: -- you know he's asserted the claim for the
13 same reason that his assertion that he was discharged on the
14 basis of protected concerted activity is relevant. That's his
15 impression.

16 JUDGE WEDEKIND: But that's not relevant.

17 MS. DEMIROK: It's not.

18 JUDGE WEDEKIND: It's not.

19 MR. DAWSON: It's not relevant that he believes --

20 JUDGE WEDEKIND: It's not.

21 MR. DAWSON: -- that he was fired for protected --

22 JUDGE WEDEKIND: No, why --

23 MR. DAWSON: -- concerted --

24 JUDGE WEDEKIND: -- why is that relevant to whether you
25 actually did so?

1 MR. DAWSON: Okay.

2 JUDGE WEDEKIND: And yeah, and it's just --

3 MR. DAWSON: Understood.

4 JUDGE WEDEKIND: -- it's just not relevant. It's
5 prejudicial. It's -- but it's --

6 MR. DAWSON: I --

7 JUDGE WEDEKIND: -- just not relevant.

8 MR. DAWSON: I apologize, Your Honor.

9 JUDGE WEDEKIND: No, it's not a -- you know you're free to
10 try.

11 MR. DAWSON: Yeah. All right. Well --

12 JUDGE WEDEKIND: But I mean --

13 MR. DAWSON: -- I gave it a shot.

14 JUDGE WEDEKIND: -- but I just want to ask. Is it the
15 company's position that you fired him because of his
16 disability?

17 MR. DAWSON: No.

18 JUDGE WEDEKIND: Okay.

19 MS. OVIEDO: I don't know. It seems like there's a --

20 MR. DAWSON: Absolutely not.

21 MS. OVIEDO: -- theory.

22 JUDGE WEDEKIND: I mean I just want to make sure I got
23 the -- you know got -- what was clear about what the position
24 is, would've been.

25 MR. DAWSON: Absolutely. Thank you, Your Honor.

1 JUDGE WEDEKIND: Sure.

2 MS. OVIEDO: We'll call our friends over at EEOC.

3 MR. DAWSON: Yeah. Now I know there's -- I know
4 there's --

5 JUDGE WEDEKIND: We're still on the record. Let's --

6 MR. DAWSON: -- cooperation.

7 JUDGE WEDEKIND: -- okay. I sustained the objection to
8 the question so there's no need to answer it.

9 THE WITNESS: Okay, Judge.

10 MR. DAWSON: Okay.

11 Q BY MR. DAWSON: Mr. Wallace, if we could go back just for
12 a moment to the March 31st meeting --

13 A Yes, sir.

14 Q -- your questions obviously were just about healthcare,
15 right?

16 A Yeah.

17 Q And nobody else brought up any issues about the Union --

18 A No.

19 Q -- correct, that you can recall?

20 A No, Union wasn't talked about --

21 Q Wasn't talked --

22 A -- that day.

23 Q -- about. Okay. And in fact you have no knowledge of
24 whether Shamrock was aware of anyone's Union activity?

25 A At that time, no.

1 Q Okay. And that included your own?

2 A Right.

3 Q Okay.

4 MR. DAWSON: Your Honor, nothing further.

5 JUDGE WEDEKIND: Okay. Any redirect?

6 MS. DEMIROK: Just a couple of questions.

7 JUDGE WEDEKIND: Sure.

8 **REDIRECT EXAMINATION**

9 Q BY MS. DEMIROK: Mr. Wallace, aside from yesterday did we
10 meet on any other days?

11 A Yes, we did.

12 Q Now you mentioned earlier about how discipline drops off.
13 Can you explain to us what that -- what the system is?

14 A A lot of employees can't explain it and I can do the best
15 that I can. It's a 12 month rolling period so you're allowed
16 four. I believe it's four call ins within a year so or --
17 yeah. Four within a year and then you have to wait 12 months
18 for one of those to fall off.

19 Q Have you ever gotten discipline that has eventually fallen
20 off?

21 A Yeah, definitely.

22 Q And I just want to be real clear. What were the reasons
23 you were told of why you were being fired?

24 A Because I brought up about the healthcare and that I was
25 rude and disrespectful when I said -- when I asked a question.

1 And those were the reasons I was given.

2 Q No other reasons?

3 A No.

4 MS. DEMIROK: No further questions.

5 MR. DAWSON: Just one question if I may, Your Honor?

6 **RECROSS-EXAMINATION**

7 Q BY MR. DAWSON: Mr. Wallace, you don't have any -- you
8 didn't have any conversations I think you mentioned with anyone
9 else from management regarding your discharge --

10 A No, sir.

11 Q -- other than Mr. Vaivao -- sorry -- Mr. Vaivao and Mr.
12 Allen?

13 A Yes, the following day I did call Jake and let him know
14 what happened. And I got a hold of Jake and he was like what?
15 I can't believe that. And then other than that I haven't
16 talked to anyone from Shamrock.

17 Q Okay. And were you also told during that meeting that you
18 were insubordinate?

19 A No. Huh-uh.

20 Q You were not? Okay.

21 A No, they -- Ivan told me that I was -- I disrupted senior
22 staff and that I was rude and that was the reason why he gave.

23 MR. DAWSON: Nothing further, Your Honor.

24 JUDGE WEDEKIND: Done?

25 MS. DEMIROK: Nothing, Your Honor.

1 JUDGE WEDEKIND: Thank you, Mr. Wallace.

2 THE WITNESS: Thank you, sir.

3 JUDGE WEDEKIND: Please don't discuss your testimony with
4 any other witness or potential witness until this proceeding is
5 over hopefully by Friday.

6 THE WITNESS: Okay.

7 JUDGE WEDEKIND: Thank you.

8 THE WITNESS: Thank you, Judge.

9 JUDGE WEDEKIND: Sure. Let's go off the record for a
10 minute.

11 (Off the record at 4:29 p.m.)

12 JUDGE WEDEKIND: Okay. Let's go back on the record.

13 Okay. Are we on? Okay.

14 MR. DAWSON: Your Honor, we had just wanted to raise an
15 issue. We were a little unclear with one of the complaint
16 amendments, the first complaint amendment.

17 JUDGE WEDEKIND: Uh-huh. Okay.

18 MR. DAWSON: And were just wondering to the extent that
19 you know it isn't work product if we could get -- and I'm only
20 getting on my iPad so -- oh, here actually. Actually I guess
21 I'm not.

22 JUDGE WEDEKIND: This is the oral amendment that on the
23 first one?

24 MR. DAWSON: No, actually this was before the hearing
25 opened. The complaint was amended. In fact if I can approach

1 I can show Your Honor a copy of it.

2 JUDGE WEDEKIND: Sure.

3 MR. DAWSON: This -- it was paragraph B that we weren't
4 quite sure. The paragraph opens talking about Mr. Lerma.

5 JUDGE WEDEKIND: Okay. I can pull it up on --

6 MR. DAWSON: Okay.

7 MS. OVIEDO: Todd, we can maybe address this off the
8 record if you want.

9 MR. DAWSON: Is it -- yeah, and that -- that's fine. At
10 least I'm -- I just -- I didn't know if we were --

11 MS. DEMIROK: It would be good to get some clarification
12 on the record as far as what the amendment goes to.

13 JUDGE WEDEKIND: Which one are you concerned about, B, 6B?

14 MR. DAWSON: 6B, correct. If that -- if that's intended
15 to refer to Mr. Lerma's discipline. But it says Respondent
16 engaged in the conduct described at paragraph 5 --

17 JUDGE WEDEKIND: Oh.

18 MR. DAWSON: -- P because Wallace assisted the Union.

19 MS. DEMIROK: It's --

20 JUDGE WEDEKIND: That --

21 MS. DEMIROK: -- if I may clarify --

22 JUDGE WEDEKIND: Sure.

23 MS. DEMIROK: -- it's essentially alleging Mr. Wallace's
24 termination in addition to an 8(a)(1) violation but also in
25 violation of 8(a)(3) for his Union activity. And so it refers

1 to paragraph 5A I believe.

2 MS. OVIEDO: And, Todd, it may help to explain that when
3 we group -- Your Honor, when we write complaints we group
4 allegations by paragraph so --

5 JUDGE WEDEKIND: Right.

6 MS. OVIEDO: -- paragraph six alleges all the 8(a)(3)
7 violations.

8 JUDGE WEDEKIND: Uh-huh.

9 MS. OVIEDO: And so you'll see at the end paragraph it
10 alleges. So it makes reference to 5P but that is not a typo
11 and none of those are typos. You just have to -- basically
12 it's -- we have the key of how to read a complaint and if
13 you're not --

14 JUDGE WEDEKIND: Right.

15 MS. OVIEDO: -- familiar --

16 JUDGE WEDEKIND: It's coming back to me. I had the same.
17 I was like well why is it all grouped together. I -- you
18 know --

19 MS. OVIEDO: Right.

20 MS. DEMIROK: Yeah.

21 MS. OVIEDO: So --

22 JUDGE WEDEKIND: And so -- and I figured it out but you
23 know where --

24 MS. DEMIROK: It says that Respondent discharged employee
25 Thomas Wallace and it -- and then --

1 JUDGE WEDEKIND: All right.

2 MS. DEMIROK: -- the amendment says that they discharged
3 him because he had engaged in the Union activity --

4 MS. OVIEDO: So --

5 MS. DEMIROK: -- to discourage others from engaging in --

6 MR. DAWSON: Oh, okay.

7 MS. DEMIROK: -- Union activity.

8 MS. OVIEDO: Paragraph five is all 8(a)(1) violations.

9 Paragraph six is 8(a)(3) violations.

10 MR. DAWSON: I understand.

11 JUDGE WEDEKIND: So there's no typos. It means --

12 MS. OVIEDO: So there's no typos.

13 JUDGE WEDEKIND: -- what it says, yeah.

14 MR. DAWSON: Perfect. No, that --

15 JUDGE WEDEKIND: Okay.

16 MR. DAWSON: -- that's fine. That's --

17 JUDGE WEDEKIND: Sure.

18 MR. DAWSON: -- that's all we needed.

19 JUDGE WEDEKIND: Okay.

20 MR. DAWSON: Thank you, Your Honor.

21 JUDGE WEDEKIND: Okay. 9:00 tomorrow. Thanks. Off the
22 record.

23 **(Whereupon, the hearing in the above-entitled matter was**
24 **recessed at 4:36 p.m. until Tuesday, September 15, 2015 at 9:00**
25 **a.m.)**

1 C E R T I F I C A T I O N

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 28, Case Number
4 28-CA-150157, Shamrock Foods Company and Bakery, Confectionary,
5 Tobacco Workers' and Grain Millers International Union, Local
6 Union No. 232, AFL-CIO-CLC and at the National Labor Relations
7 Board, Region 28, 2600 North Central Avenue, Suite 1400,
8 Phoenix, Arizona 85004, on Monday, September 14, 2015, at 9:01
9 a.m. was held according to the record, and that this is the
10 original, complete, and true and accurate transcript that has
11 been compared to the reporting or recording, accomplished at
12 the hearing, that the exhibit files have been checked for
13 completeness and no exhibits received in evidence or in the
14 rejected exhibit files are missing.

15
16 Deborah Gonzalez
17

18 DEBORAH GONZALEZ

19 Official Reporter
20
21
22
23
24
25